

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
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Petition for approval of delivery services tariffs and)	
tariff revisions and of residential delivery services)	No. 01-0423
implementation plan, and for approval of certain)	
other amendments and additions to its rates, terms,)	
and conditions)	

**REPLY BRIEF OF
AES NEWENERGY, INC.,
BLACKHAWK ENERGY SERVICES, L.L.C.
AND ENRON ENERGY SERVICES, INC.**

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AES NewEnergy, Inc. (“AES NewEnergy”), Blackhawk Energy Services, L.L.C. (“Blackhawk”), and Enron Energy Services, Inc.[†] (“Enron”), (collectively the “ARES Coalition”), by their attorneys, Piper Marbury Rudnick & Wolfe, pursuant to Section 10-101 of the Public Utilities Act (the “Act”) and Section 200.800 of the Rules of Practice hereby submit to the Illinois Commerce Commission (“Commission”) their Reply Brief with regard to the Delivery Services Implementation Plan (“DSIP”) and Delivery Services Tariffs (“DSTs”) proposed by Commonwealth Edison Company (“Edison,” “ComEd” or the “Company”) in the instant proceeding.

[†] In a clear cheap shot, Edison refers to Enron as the “now-bankrupt Enron Energy Services”. (Edison Initial Brief at p. 8, fn.) Apparently, Edison has forgotten that it was not so long ago that virtually the only thing standing between Edison and the bankruptcy courts was the Illinois Commerce Commission. A series of Commission Orders likely saved Edison from an insolvency induced by its nuclear construction program. ARES witness Philip R. O’Connor chaired the Commission during the period when several of the most controversial of those Orders were issued. Because it operates in the competitive arena, and does not have state-endorsed monopoly status, Enron did not have the option of regulators entering an Order to stave off bankruptcy. There but for the grace of the Commission goes Edison.

In the instant Reply Brief, the ARES Coalition responds to the Initial Briefs filed by Edison, the Staff of the Illinois Commerce Commission (“Staff”), the People of the State of Illinois, the Cook County State's Attorney's Office, the Citizens Utility Board, and the City of Chicago (collectively “GC”), the Building Owners and Managers Association of Chicago (“BOMA”), the United States Department of Energy (“DOE”), Illinois Industrial Energy Consumers (“IIEC”), MidAmerican Energy Company (“Mid-American”), Midwest Generation, LLC (“Midwest”), National Energy Marketers Association (“NEMA”), Nicor Energy, L.L.C. (“Nicor”), and TrizecHahn Office Properties, Inc. (“TrizecHahn”).

EXECUTIVE SUMMARY:

THE COMMISSION SHOULD SEE THROUGH EDISON’S ATTEMPT AT MISDIRECTION AND TAKE THE STEPS NECESSARY TO PROMOTE THE DEVELOPMENT OF COMPETITION IN THE ILLINOIS RETAIL ELECTRIC MARKET

Edison’s Initial Brief does nothing to assist the Commission in understanding the relevant law or the record evidence in the instant proceeding. Instead, it ignores, downplays or misstates both the law and the substantial evidence that contradicts Edison’s current position. Edison’s Initial Brief even attempts to hide from the positions asserted by its own witnesses in the instant proceeding. The spin that Edison is now trying to put on the facts makes its current story not only improbable, but impossible.

The parties are virtually unanimous in their conclusion that Edison’s proposed revenue requirements and rate design are fatally flawed and should be rejected. (*See* ARES Coalition Initial Brief at 9-12, Staff Initial Brief at 2, 6; GC Initial Brief at 1-3; IIEC Initial Brief at 23; NEM Initial Brief at 4; TrizecHahn Initial Brief at 3-6; BOMA Initial Brief at 3-4.) Consistent with the testimony of their witnesses, the parties generally agree that Edison’s proposal would hobble competition in the short term and saddle all ratepayers with enormous

rate increases in the long term. (*See* ARES Coalition Initial Brief at 2; GC Initial Brief at 2; TrizecHahn Initial Brief at 6, 12; BOMA Initial Brief at 4; IIEC Initial Brief at 2-3.) Undaunted by the substantial evidence presented against its proposal, Edison’s Initial Brief unabashedly asserts that many of its assertions are “for all practical purposes” and “in many respects” “uncontradicted.” (*See, e.g.*, Edison Initial Brief at 3, 6, 10, 43.) These assertions are in the same category as Edison’s claim that it incurred no extra costs in 2000 due to past failures to maintain the distribution system. That is, nothing could be further from the truth. Parties attacked Edison’s unsupported assertions at every turn; questioning the very basis for Edison’s proposal thereby putting at issue every component of Edison’s proposal.

The ARES Coalition respectfully requests that the Commission enter an Order in the instant proceeding that severs the non-residential portion of the proceeding and significantly modifies Edison’s proposed revenue requirements and rate design.

**A. STAFF AND INTERVENORS AGREE
THAT THE COMMISSION SHOULD REJECT OR
SUBSTANTIALLY MODIFY EDISON’S PROPOSED RATES AND TARIFFS**

In the Initial Briefs, Staff leads the charge in opposing Edison, noting that, due to Edison’s use of a 2000 test year and its failure to make appropriate adjustments and present appropriate evidence, Edison has failed to submit sufficient evidence to demonstrate that rates based upon the evidence in the record would be “just and reasonable.” (*See* Staff Initial Brief at 6.) The GC Initial Brief likewise notes that Edison failed to prove that its proposed test year consists entirely of prudently incurred and otherwise just and reasonable expenditures. (*See* GC Initial Brief at 2.) Indeed, if anything, the record makes clear that it is impossible to treat the rates implied by the proposed 2000 test year as just and reasonable. Other parties similarly challenge Edison proposed revenue requirements and rate design. (*See* IIEC Initial Brief at 4,

9, 10, 22-23, 26; NEM Initial Brief at 5, 8-9; Midwest Initial Brief at 8-25; TrizecHahn Initial Brief at 13, 15, 18; BOMA Initial Brief at 5, 6, 9-10, 14.)

Edison's Initial Brief simply paints an inaccurate picture of both the relevant law and the record evidence. The Commission instead should look to Staff and other parties for the appropriate guidance. It is clear that, as a matter of law:

?? Edison is not allowed to increase its delivery services rates during the mandatory transition period. (*See* 220 ILCS 5/16-111.)

?? As recognized by Staff, the Commission has no deadline to implement any changes to Edison's non-residential tariffs. (*See* Staff Response to Petition for Investigation and Response to Motion to Dismiss (hereinafter "Staff Response"), ICC Docket No. 01-0664 at 11-12, ¶ 22.)

?? Edison cannot collaterally attack the decisions that the Commission made in the 1999 Edison DST Proceeding or the Unbundling Proceeding. (*See* Commonwealth Edison Company, *Petition for approval of delivery services tariffs and delivery services implementation plan and for approval of certain other amendments and additions to its rates, terms, and conditions*, Order on Rehearing, March 9, 2000 (the "1999 Edison DST Proceeding"). *See also* Illinois Commerce Commission, *On Its Own Motion, Investigation Concerning the Unbundling of Delivery Services Under Section 16-108 of the Public Utilities Act*, Order, October 4, 2000, ICC Docket No. 99-0013 (the "Unbundling Proceeding").)

?? The Commission is required to take into account the rate shock that would result if it were to accept Edison's proposed massive **47.5% or \$575 million increase** in its revenue requirements. (*See* 220 ILCS 5/16-108(d).)

Consistent with those legal arguments, the Commission should sever the non-residential portion of Edison's proposal and address only Edison's proposed residential rates and tariffs consistent with the positions put forward by the ARES Coalition, Staff, GC, BOMA, and IIEC.

When it comes to the facts, apparently Edison cannot even keep its story straight. Edison's Chairman John Rowe told the press one story when he promised that "This will not cost ratepayers any more money because we have fixed rates. This is our problem. We'll fix it ourselves." This is the same story that Edison's parent company, Exelon, told its shareholders when it wrote "A utility may request a rate increase during the rate freeze period *only* when necessary to ensure the utility's financial viability." (See ARES Cross Ex. 83, Exelon Corporation 2000 Annual Report, Notes to Consolidated Financial Statements, at 70.) (Emphasis added.) That story was then again confirmed by Edison's then-Vice President, Pamela Strobel, Esq. who told the Commission in April of 2001 that "I don't think it comes up in the delivery service case right away but at some point when we do the test year rate case as we go into fully unbundled territory in 2004 and 2005, we will have to make an assessment of how much it really costs to run the transmission and distribution system on a going forward basis. Right now all of this additional expenditure that is associated with the reliability improvement plan is borne by the Exelon shareholders because of the frozen rates in Illinois." (See ARES Cross Ex. 5, Transcript of ICC Electric Policy Meeting, April 18, 2001.) Of course, less than two (2) months after Ms. Strobel provided that explanation to the Commission, Edison changed its story, when her company filed the instant proceeding, seeking an increase in those frozen rates.[†]

[†] It was later revealed that even as Ms. Strobel was offering that explanation of the law to the Commission, Edison employees were working to prepare to spring this rate increase on the Commission, ratepayers and competitors. (See Tr. at 12291 3366; 3456-57.)

To backtrack from her original position, which she now refers to as a “mistake,” Ms. Strobel offered a backup position. (*See* Tr. at 729; ComEd Ex. 18.0 at 6.) On the topic of whether Edison’s proposed revenue requirements are inflated due to Edison’s past imprudence or mismanagement, Ms. Strobel asserted that Edison “did a thorough review of the costs that we are seeking to recover that are included in the 2000 test year. And where we thought that there were costs related to that and that should not be included, we took those costs out of our test year.” (Tr. at 671-72.) (*See also* Tr. at 670.) Ms. Juracek likewise admitted that the Company incurred costs in the test year as a result of its “errors of the past” and alleged that the Company had “adjusted for some of thohse higher costs where appropriate.” (Tr. 3378, 3374.) Thus, Ms. Strobel was unequivocal in recognizing that additional cost had been incurred due to failures of the past and was equally unequivocal that Edison had removed those costs from its revenue requirements in the instant proceeding. As it turns out, that story was not true either.

As explained in the ARES Coalition’s Initial Brief at pages 37 to 42, **Edison made no adjustment to account for its failures of the past** other than to remove the out-of-pocket costs associated with the Commission-ordered Liberty and Vantage Reports that documented Edison’s mismanagement and failures of the past.

So, apparently realizing the failures of its evidence in the instant proceeding, Edison’s Initial Brief backtracks from even Edison’s fallback position and now asserts that there were no additional costs incurred during the 2000 test year as a result of Edison’s failures of the past other than those out-of-pocket costs for the Liberty and Vantage Reports. (*See* Edison Initial Brief at 14.) Of course, this not only contradicts the testimony of Edison’s own witnesses, it defies common sense. Edison’s position is inherently impossible, let alone merely inherently

improbable.[†] The Commission must take into account Edison's complete lack of credibility as it evaluates Edison's assertions in the instant proceeding.

In addition to Edison's misleading statements regarding its atypical costs included in its proposed revenue requirements, Edison's Initial Brief relies upon on the following attempts at misdirection:

?? Edison improperly tries to hide the impact of its proposal. Edison repeatedly asserts in its Initial Brief that ratepayers would feel little, if any, financial impact, even if this Commission and the Federal Energy Regulatory Commission ("FERC") granted its full proposed revenue requirements increases totaling **\$752 million**. Only Edison could make the brash assertion that it could take an additional three-quarters of a billion dollars annually from ratepayers and that ratepayers would not feel the impact. The only support that Edison cites for this assertion is (1) a "sample calculation" that Edison's witnesses explained was provided "for illustrative purposes"; and (2) a customer transition charge ("CTC") offset example presented by Ms. Juracek in which she unjustifiably assumes market prices will be

[†] In the remand of the 1999 Edison DST Proceeding, Edison was faced with the fact that there was **no** documentary evidence supporting the bare assertions of its witnesses. Ignoring the complete lack of credibility of its witnesses, Edison asserted that the Commission should use an "inherently improbable" standard. The ALJ's Proposed Order summarized Edison's position:

ComEd avers that under Illinois law it is clear that "[t]he uncontradicted testimony of a witness must be taken as true unless it is impeached by other testimony or circumstances, or it is found to be inherently improbable." *Jones v. Consolidation Coal Co.*, 174 Ill. App. 3d 38, 44, 528 N.E.2d 33, 37 (5th Dist. 1988); *see also Cockrell v. Koppers Industries, Inc.*, 281 Ill. App. 3d 1099, 1106-07, 667 N.E.2d 676, 682 (Ill. App. 1st Dist. 1996) (finder of fact cannot reject the testimony of an unimpeached witness, even if that witness is interested). Accordingly, ComEd argues that the assertions by the Staff or the City that the Commission has the right for no reason to reject competent witnesses' uncontradicted testimony is contrary to Illinois law and should be rejected. ComEd contends that the evidence it submitted to the record in this matter far exceeds the "uncontradicted and not inherently improbable standard", should be accepted and the *pro forma* adjustments should be approved.

(Proposed Order on Remand, ICC Docket No. 99-0117, issued December 11, 2001, at 3.) In the instant proceeding, there is ample contradictory evidence for the position asserted in Edison's Initial Brief; in fact, Edison's own witnesses often times contradict Edison's current position. Thus, even applying Edison's "inherently improbable" standard - or a more strict "inherently impossible" standard - the Commission should enter an Order rejecting Edison's current position.

approximately 35.5% lower than those presently in Edison's Commission-approved tariffs. (*See* ComEd Ex. 2.0 at 22; ComEd Ex. 32.0 at 27; ComEd Ex. 50.0 at 11-12; Tr. at 1235-36.)

?? Edison improperly implies that higher rates would have prevented its failures of the past. Edison implies in its Initial Brief that its failures of the past were as a result of it not spending enough to allow it to adequately maintain its distribution system. (*See* Edison Initial Brief at 91.) However, Edison Chairman Strobel testified that Edison's past failures were not due to Edison's rates being too low. (*See* Tr. at 706.) In fact, Chairman Strobel admitted that management problems were a contributing factor. (*See* Tr. at 669.)

?? Edison understates the profits that its shareholders have realized. Edison's asserted "analysis" regarding the costs that shareholders have "borne" merely is only half of the picture, ignoring the fact that Edison has more than made up for any distribution "losses" through real profits on the generation side of its business. Edison attempts to divert the Commission's attention from the profits Edison has pocketed as a result of the Electric Customer Choice and Rate Relief Law of 1997 ("Customer Choice Act"). The Commission need shed no tears for Edison's shareholders; so far, they have been the primary beneficiaries of the provisions of the Customer Choice Act. (*See* GC Ex. 1.0 at 20-27.)

?? Edison overstates the "burden" that has been placed upon its shareholders. Edison improperly uses the existence of "regulatory lag," to erroneously assert that its shareholders have borne costs associated with Edison's improvements to its distribution system. Edison's "analysis" merely reflects the existence of "regulatory lag" which is defined as "the quite usual delay between the time when reported rates of profit are above or below standard and the time when an offsetting rate decrease or rate increase may be put into effect by commission order or otherwise." James C. Bonbright, et al., *Principles of Public Utility Rates* 96 (1988).

?? Edison improperly asserts that the Commission should base its rates upon an "analysis" it presented of other "comparable" utilities. (*See* Edison Initial Brief at 12.) This purported "analysis" is just as misleading as Edison's CTC "analysis." Edison's comparable utility "analysis" fails to consider the over 100% increase in

transmission revenue requirements that Edison has proposed to the FERC. When Edison's proposed transmission rate hike is included, Edison's rates would rise to just about the median. More to the point, this alleged comparison is irrelevant. If the Commission had been able to impose such a "comparable utility" standard in the 1980's and 1990's, to reduce Edison's high rates, Edison rightly would have opposed such an approach. Those high rates led to the enactment of the Customer Choice Act. That standard unfortunately was not the standard then, and it is not the standard now.

**B. THE COMMISSION SHOULD ADOPT
ONE OF THE SOLUTIONS OUTLINED BY THE ARES COALITION**

The ARES Coalition in its Initial Brief at pages 115 to 118 set forth two detailed alternative solutions for the Commission. The positions set forth in the Initial Briefs of the parties in the instant proceeding largely support the Commission implementing one or the other of these two options. For the Commission's convenience, these two solutions are further developed herein, as informed by the Initial Briefs of the parties.

Solution Option One

The most straightforward and appropriate solution would be for the Commission to take the following four steps:

- (1) **Sever the non-residential segment of Edison's proposal from the residential segment.** This would be consistent with the portions of the Act which provide that this proceeding was to address residential delivery services rates and tariffs, and that Edison's rate levels are frozen. (See 220 ILCS 5/16-104, -111.) As explained by Staff, the Commission is not required to address non-residential rates and tariffs in the instant proceeding, nor should it. (See Staff Response, ICC Docket No. 01-0664, at 11-12, ¶ 22.) This also would be consistent with the positions in the instant proceeding of Staff, GC, BOMA, TrizecHahn and IIEC who all note that Edison's evidence in the instant proceeding is inherently flawed. (See Staff Initial Brief at 2; GC Initial Brief at 2-3; BOMA Initial Brief at 9-10, TrizecHahn Initial Brief at 3-4; IIEC Initial Brief at 9.)

- (2) **Reject Edison’s proposal in its entirety as it relates to the non-residential segment.** The Commission should reject both Edison’s proposed rate design changes and its proposed revenue increase for non-residential customers. Once the Commission accepts the position of Staff and GC that at a base level Edison has failed to justify its proposed rates, it necessarily follows that the current non-residential DST rates should not be altered. (*See* ARES Coalition Initial Brief at 11; BOMA Initial Brief at 2-3.)
- (3) **Set residential rates based upon the 1999 Edison DST Proceeding.** The Commission should use the revenue requirements and cost allocations found by the Commission to be “just and reasonable” in the 1999 Edison DST Proceeding, and modify the proposed rate design and impose conditions as recommend by Staff and GCI. (*See* Staff Initial Brief at 6; GC Initial Brief at 3; BOMA Initial Brief at 7.)
- (4) **Initiate an audit.** The Commission should initiate an audit of Edison’s delivery system investment and expenses, as recommended by Staff and GCI, to identify costs caused by past mismanagement or otherwise imprudently incurred that would be excluded as a basis for a setting of delivery service and bundled service rates in the future. (*See* Staff Initial Brief at 2; GC Initial Brief at 2-3; BOMA Initial Brief at 9-10, TrizecHahn Initial Brief at 3-4; IIEC Initial Brief at 9.)

As explained in the ARES Coalition’s Initial Brief at page 115, this solution would allow the non-residential market to continue to develop using the same “rules of the road” that the Commission endorsed in the 1999 Edison DST Proceeding. It also would allow the Commission, Staff and Intervenors to obtain the evidence necessary to “get the price right” for non-residential customers in the rate case that Edison inevitably will file at the end of the mandatory transition period (the “2005 rate case”).

Solution Option Two

Should the Commission decide to set any of Edison’s DST rates based upon its proposed calendar 2000 test year, rather than severing and dismissing the non-residential segment of the proposal and setting residential rates on the revenue requirements for the 1999

Edison DST Proceeding, the Commission still could prevent the worst of the damage to customers and continue to promote competition by accepting the recommendations of the ARES Coalition, Staff and GC. Specifically, the Commission should take the following ten (10) steps:

(1) Deflate Edison's proposed 2000 test year. The Commission should address the most obvious excesses associated with the test year. This would require that the Commission:

- ?? Reject Edison's effort to re-allocate at least \$39.5 million in incentive compensation costs from cost categories previously allocated by the Commission to generation and allow such cost categories to be covered through the CTC.
- ?? Disallow Edison's effort to belatedly re-allocate at least \$27 million in operating expenses from transmission to distribution allegedly based on application of the FERC "7 factor test," but rooted in the use of CBMS, an accounting system that is unverified and that did not produce information in a format that Staff found usable.
- ?? Otherwise reject Edison's request for use of a hybrid direct assignment scheme to delivery services for administrative and general expenses and general and intangible plant. Edison's direct assignment scheme relies in great part on CBMS, which was reconfigured only in the final quarter of the 2000 test year to account for the tracking of costs by re-organized functions and corporate entities created in 2001, after the test year. Instead, the Commission should adopt the labor allocator method consistent with the Commission's 1999 decision in this regard.
- ?? Disallow inclusion in delivery services rates cost items such as the clean up of Coal Tar or Manufactured Gas Plants, since such items clearly are unrelated to the provision of delivery services. Instead, the Commission should provide for recovery of these costs through CTCs.
- ?? Disallow inclusion in delivery services rates the reflection of such obvious one-time, non-recurring cost items such as the Jefferson Substation Refurbishment, the 2000 Summer Readiness Program and the Data Conversion Project. The Jefferson project was the poster child for Edison's reliability failures and hopefully a one-time event; the 2000 Summer Readiness Program was a mad scramble to catch up to reasonable

levels of reliability; and the data to be converted in the Data Conversion Project will be converted but one time.

?? Adopt GC's six-year normalization of tree trimming expenses.

?? Adopt GC's five-year normalization of storm restoration expenses.

?? Accept various other reasonable adjustments to operating revenues and expenses proposed by GC and Staff.

(2) Adopt the cost of equity and debt figures agreed upon by Staff, GC and Edison.

The Commission should accept the settlement but include a conclusion soundly rejecting Edison's contention that the cost of equity for delivery services should include equity costs associated with other functions, such as supply price risk, that are unrelated to delivery services and therefore prohibited from inclusion by the Act.

(3) Maintain rate continuity regarding the methodology used to calculate rates. The Commission should enter an Order consistent with its Order in the 1999 Edison DST Proceeding by adopting an embedded cost of service study as notified by Staff and GC for the allocation of costs among classes of customers rather than Edison's marginal cost of service study.

(4) Maintain continuity in rate design. The Commission should reject all of Edison's efforts, through rate design change proposals, to significantly alter the savings structure established two years ago, thus permitting customers who already have entered the competitive market to be spared a midstream change in the rules of the game. This would require the Commission to:

?? Reject Edison's request for an annual ratchet and adopt a monthly ratchet as the Commission did in the 1999 Edison DST Proceeding.

?? Reject the fragile and poorly supported Rider HVDS. Instead, the Commission should direct Edison to undertake a reasonable effort prior to the filing of the next bundled service rate case to prepare a more comprehensive set of voltage-based rates that could be considered for both delivery services and bundled service.

?? Decline Edison's invitation for the Commission to reverse itself on decisions it made just months ago regarding the Single Bill Option ("SBO"). The Commission again should reject Edison's proposal to use marginal cost based credits for customers served under the SBO. The Commission also should reject Edison's

proposal to prevent a customer with a past due balance, as determined by the much criticized Edison billing system, from going on SBO at the time of DASR submission.

?? Reject Edison's effort to virtually wipe out credits for those who may choose alternative metering from a party duly certificated by the Commission to provide such service.

- (5) **Phase-in any rate increase.** To the extent the Commission permits the inclusion of new plant in rate base, provide for a phase-in, without carrying charges, of capital investment made in the delivery system since the 1997 test year. This phase-in could occur over the next five years, or a period designed to coincide with the re-initialization of bundled service rates in 2005, with no more than half of the new investment introduced into delivery service rates prior to their reflection into bundled rates.
- (6) **Initiate an audit.** Regardless of the Commission's decisions on other issues, it is obvious that the Commission should initiate an audit of delivery system investment and expenses, as recommended by Staff and GC. This audit should be used to identify costs that were caused by past mismanagement or otherwise imprudently incurred. The audit then should be used as a basis for a setting of delivery service and bundled service rates in the future, including a reduction in any scheduled phase-in amounts.
- (7) **Improve the information flow in the competitive market.** The Commission should improve competitive conditions and information access for customers by directing Edison to make information for Rider 25 customers appropriately available through the PowerPath website or other means.
- (8) **Revise Rider ISS.** The Commission should approve a modified version of Edison's proposed Rider ISS by providing for a 0%, 5% and 10% monthly scale up of the proposed market value penalty that should be reflected in Edison's revenue requirements, similar to the way in which imbalance penalties are reflected.
- (9) **Reject Edison's proposed agency form.** The Commission should reject Edison's proposal to require use of a new standard agency agreement.
- (10) **Reject the proposed Rider TS.** The Commission should reject Edison's improper attempt to shift liability to retail customers.

These two solution options offered by the ARES Coalition are largely consistent with the positions outlined in the Initial Briefs of Staff, GC, BOMA, IIEC, TrizecHahn, and NEM. The ARES Coalition respectfully requests that the Commission enter an Order in the instant proceeding adopting one of those two solutions.

I. LEGAL ISSUES AND STANDARDS FOR DECISION

Staff, GC, BOMA and TrizecHahn all presented important legal and policy issues that bolster and supplement those presented in the Initial Brief of the ARES Coalition. The parties also appropriately have anticipated some of Edison's improper assertions regarding the standards that should guide the Commission.

A. SUBSTANTIVE STANDARDS AND POLICIES GOVERNING REQUESTED RATES

As noted in the Initial Brief of the ARES Coalition at pages 20 to 37, the following substantive standards should govern the Commission's decision in the instant proceeding:

(1) Section 16-111(a) prohibits the Commission from ordering rate increases during the mandatory transition period. (*See* ARES Coalition Initial Brief at 21-23.) BOMA supports the ARES Coalition's explanation of the "rate freeze" provisions of the Act. (*See* BOMA Initial Brief at 2-3.) Edison fails to cite any specific legal authority for the Commission to increase Edison's delivery services rates during the mandatory transition period. Interestingly, in the Investigation and Audit Proceeding, Edison has asserted that the party initiating the proceeding must clearly set forth the Commission to grant legal basis for the relief that is sought. (*See* Commonwealth Edison Company's Motion to Dismiss, *Petition for an investigation and audit of certain distribution system investments and other expenditures by Commonwealth Edison Company*, ICC Docket No. 01-0664 (hereinafter "Investigation and Audit Proceeding"), at 2.) Of course, applying Edison's own standard to Edison's Petition in

the instant proceeding, the Commission would be compelled to dismiss that portion of Edison's petition which addresses non-residential delivery services rates not only is the initiating petition legally deficient in this regard; Edison has utterly failed to provide any legal basis for the Commission to address non-residential rates in the instant proceeding.

(2) Under the legal maxim *expressio unius est exclusio alterius*, Edison is not authorized to petition for an increase in its non-residential delivery services rates during the mandatory transition period. (See ARES Coalition Initial Brief at 23-27.) Again, BOMA supports the ARES Coalition. (See BOMA Initial Brief at 2-3.) The Customer Choice Act authorizes Edison to make specific filings, under certain circumstances, during the mandatory transition period. (See 220 ILCS 5/16-111(d), (f).) These provisions do **not** authorize Edison to petition the Commission for an increase in its delivery services rates during the mandatory transition period.

Any attempt to imply authority for Edison filing a petition for a delivery services rate increase during the mandatory transition period is misguided. The Illinois Appellate Court in *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 203 Ill. App. 3d 424, 438 (2nd Dist. 1990) recognized the well-settled matter of statutory construction that "the expression of one thing excludes any other, even if there are no negative words prohibiting it." In *Illinois Bell*, the court found that the statutory authority given to the Commission to order incentive regulation after the Commission has conducted a study and has sought the advice of the legislature did not give the Commission authority to order incentive regulation without these necessary precedents. In short, specific authority conditioned on certain clear conditions precedent limit, not expand, the authority and makes it less likely that the General Assembly intended a broad grant of authority. Petitions for rate increases during the mandatory transition

period are only allowed if the utility is experiencing financial distress. (See 220 ILCS 5/16-111(d).) Since Edison is not experiencing financial distress, there is no authority for it to petition to initiate the instant proceeding.

(3) **Edison does not have the authority to collaterally attack the Commission's Final Orders in the 1999 Edison DST proceeding and the Unbundling Proceeding.** (See ARES Coalition Initial Brief at 27-29.) The ARES Coalition again finds support from BOMA, but also finds support in a recent filing made by Edison in the Investigation and Audit Proceeding. Edison asserted:

The Illinois Supreme Court has held that **a party to a pending action cannot initiate a new proceeding seeking relief that is or could have been the subject of another pending proceeding.** *East Side Levee and Sanitary District v. Madison County Levee and Sanitary District*, 54 Ill. 2d 442, 445, 298 N.E.2d 177, 179 (1973). In that case the East Side Levee and Sanitary District brought an action in the St. Clair County circuit court challenging legislation that would divide it into two separate districts. *Id.* at 444, 298 N.E.2d at 178. While those proceedings were still pending, a group of defendants in those proceedings brought a new action in the Madison County circuit court seeking an injunction preventing the depositories of the original district from disbursing any funds pending resolution of legal issues relating to the legislation. *Id.* at 445, 298 N.E.2d at 178-79. The Madison County court granted their requested relief, but the Illinois Supreme Court found this improper, holding that "the clearly proper course of action for the Madison County court was to decline jurisdiction in light of the pending St. Clair County litigation in which precisely the same relief could have been sought." *Id.* at 445, 298 N.E.2d at 179.

* * * *

Section 200.190 of the Commission's Rules of Practice provides that any relief a party seeks related to a proceeding should be sought by motion in that proceeding. 83 Ill. Adm. Code Section 200.190.

(Commonwealth Edison Company's Reply In Support Of Motion To Dismiss Petition For Investigation And Audit, ICC Docket No. 01-0664, at 10-11.) As the Commission is aware, due to Edison appealing the Commission's Orders, both the 1999 Edison DST Proceeding and

the Unbundling Proceeding are still pending before the Commission. Every argument that Edison has made regarding non-residential rates and tariffs and unbundled delivery services could have been made in those proceedings; in fact, most of the issues were addressed and rejected by the Commission.

Even under the standards endorsed by Edison, Edison is prohibited from asserting that the Commission should revisit in the instant proceeding **any** issues relating to non-residential delivery services rates or unbundled delivery services. The Commission must hold Edison accountable for the positions it puts forward in proceedings before the Commission.

(4) As a matter of policy, the Commission should not revisit policy decisions that it made less than two (2) years ago. (*See* ARES Coalition Initial Brief at 29-34.) As noted in the ARES Coalition’s Initial Brief at 28 to 29, this position is consistent with policy arguments that Edison previously made before the Commission. When it served its purposes, Edison successfully argued that “finality is of critical importance to market participants planning to make the new market work. Constant relitigation undermines this goal.” (Commonwealth Edison Company’s Verified Reply in Support of its Motion to Strike Portions of the Direct Testimony of Richard S. Shapiro, ICC Docket Nos. 98-0147, -0148 (cons.) at 9.) Of course, the Commission should not be surprised at Edison’s willingness to re-assert positions that the Commission previously has rejected unequivocally. Edison essentially has nothing to lose in making the assertions again, and Edison has much to gain if the Commission actually reverses itself. In fact, Edison gains by introducing unnecessary uncertainty in the competition market and causing RES to expend resources in regulatory proceedings. As explained in Edison’s Initial Brief at pages 62 to 95, Edison is seeking full reimbursement for its expenses associated with the instant proceeding, including legal fees and witness expenses.

In order to fight this “Groundhog Day” battle, Edison’s competitors, including those in the ARES Coalition, must continue to expend their own resources. RES and other parties, of course, do not have the ability to obtain a regulatory order directing customers to pay for litigation expenses. As Edison witness Makhholm explained, there is an economic incentive for Edison to make even frivolous filings to drain its competitors’ resources. (*See* Tr. at 2906.) Much of the activity Edison seeks to force customers to finance is by no means reasonable or “used and useful.”

Again, the Commission should not allow Edison to create a double standard for itself.

(5) The Commission must ensure that the rates it approves in the instant proceeding are based solely upon prudently incurred expenditures associated with Edison providing delivery services. (*See* ARES Coalition Initial Brief at 34-36.) GC properly observed that Edison made no lawful, reasoned analysis of whether imprudent costs are included in its proposed revenue requirements. (*See* GC Initial Brief at 11.) The Commission should look to the detailed analyses presented by GC and Staff to exclude imprudent expenditures. Moreover, given the questionable manner in which Edison has sought to refunctionalize its capital expenditures and expenses, the Commission must be vigilant to ensure that only “delivery services” related expenditures are included in the revenue requirements that it approves. (*See* ARES Coalition Initial Brief at 68; Staff Initial Brief at 7-19.)

(6) The Commission should apply its expertise to fashion creative solutions that promote the development of the competitive market. (*See* ARES Coalition Initial Brief at 36-37.) Edison improperly suggests that the Commission is strictly bound to adopt Edison’s proposal. (*See, e.g.,* Edison Initial Brief at 7.) However, the Commission is not bound by Edison’s anticompetitive formulations, even if Staff or intervenors have not championed a

specific solution. The Commission can and should apply its own expertise in developing just and reasonable tariffs.

In addition to supporting many of the standards outlined by the ARES Coalition, Staff, GC and TrizecHahn each provided additional standards that the Commission should apply in evaluating Edison's proposal. Building on those standards outlined in the ARES Coalition's Initial Brief, the Commission should also be guided by the following principles:

(7) The Commission is required to take into account the “customer impacts” of Edison’s proposal. (See Staff Initial Brief at 3.) Contrary to Edison's assertion, the Commission is required to consider the incredible rate at which customers would switch back to, or remain on, Edison's bundled rates, as well as the actual rate impact that customers would experience. The Illinois Appellate Court has recognized that the Commission cannot fulfill its statutory duty to balance the competing interests of stockholders and ratepayers without considering the impact of proposed rates on a utility's customers. (See *Citizens Utility Bd. v. Illinois Commerce Comm’n*, 276 Ill. App. 3d 730, 737; 658 N.E.2d 1194 (1st Dist. 1995).) In fact, Edison's failure to present evidence concerning the impact of its proposed rate increase on customers supports that Edison has failed to meet its burden of proof that its rates are just and reasonable. (See *Citizens Utility Bd.*, 276 Ill. App. 3d at 738-39.)

(8) Edison is not entitled to “full” recovery of its costs. (See Staff Initial Brief at 3.) Staff properly assumed that Edison again would assert that it was entitled to dollar-for-dollar recovery of its costs. (See *id.* See also Edison Initial Brief at 26.) As Staff correctly noted, the Commission properly rejected the same assertion made by Edison in the 1999 Edison DST Proceeding. (See Staff Initial Brief at 3.) Nowhere does the Act mandate a cost recovery

methodology for delivery services implementation costs which guarantees “full” recovery of utilities expenditures.

Edison goes so far as to assert -- without citation -- that it should be completely insulated, regardless of whether its expenditures were prudent or reasonable, asserting that “The Act makes it clear that in Illinois, utilities’ delivery services business is not to be subject to uncompensated costs and risks.” (Edison Initial Brief at 2.) This misguided notion of “entitlement” pervades Edison’s Initial Brief. However, Illinois law is clear that utility shareholders enjoy the benefits of owning utility property, but also bear the risks associated with such ownership. (*See Central Illinois Light Co. v. Illinois Commerce Comm’n*, 255 Ill. App. 3d 876, 886 (3rd Dist. 1993) (rev’d on other grounds).) Staff’s standard is properly grounded in the Act, noting that the Commission should adjust Edison’s proposed revenue requirements if expenditures were not prudently and reasonably incurred, if out-of-period expenditures are not “determinable” with particular certainty, and if the resulting rates would not be just and reasonable. (*See* Staff Initial Brief at 3-4. *See also* GC Initial Brief at 5.)

(9) Section 16-108(d) not only reiterates the “just and reasonable” standard, it also specifically requires that the Commission consider voltage level differences and customer impacts. (*See* TrizecHahn Initial Brief at 6.) Edison attempts to stand this section of the Act on its head, suggesting that it mandates that the Commission approve Edison’s proposed Rider High Voltage Delivery Services (“HVDS”). (*See* Edison Initial Brief at 120-21.) However, as properly explained by TrizecHahn, consideration of this provision actually justifies the Commission rejecting Edison’s proposed Rider HVDS. In the instant proceeding, the Commission must consider whether an abrupt 2000% increase in the high voltage credit,

and the resulting rate increases of up to 82% for those over 10 MW customers that are ineligible for the credit is appropriate. (*See* TrizecHahn Initial Brief at 6, 10.)

(10) Edison has the burden of proving the justness and reasonableness of its proposed rates. (*See* GC Initial Brief at 6; TrizecHahn Initial Brief at 7.) The Act places on Edison the burden to prove with verifiable evidence the prudence, justness and reasonableness of its proposed rates. (*See* 220 ILCS 5/9-201(c).)

(11) Considerations of rate continuity and the desirability of gradual change should guide the Commission's decisions regarding rate design. (*See* TrizecHahn Initial Brief at 7-8.) TrizecHahn does an excellent job of setting forth the precedent for the Commission rejecting proposals that would result in rate shock and rate discontinuity. (*See id.*) As even Edison Chairman Strobel admitted, the certainty that results from rate continuity is very important to all market participants. (*See* Tr. 683-84.)

B. PROCEDURAL ISSUES (E.G., ADMISSIBILITY)
NOT ADDRESSED IN SPECIFIC ARGUMENTS

C. OTHER POLICY ISSUES

1. Other --
Due To Edison's Failure To Be Forthcoming
Regarding The Costs Improperly Included In
Its Proposed Rates, The Commission Should Reject The
Portion Of Edison's Petition That Addresses Non-residential Rates

The Commission should not tolerate Edison's failure to be forthcoming with relevant information. (*See* ARES Coalition Initial Brief at 37-42.) As Staff has explained, Edison has steadfastly refused to recognize that its past imprudence and mismanagement have artificially inflated its proposed revenue requirements in the instant proceeding. (*See* Staff Response, ICC Docket No. 01-0664, at 9-10, ¶¶15-17.)

GC properly put Edison's actions in perspective, noting that "When forced to confront a series of embarrassing outages and an outraged public and Commission (as well as other public officials), ComEd was contrite and explained in detail the radical changes it was making at its own expense. Now, however, with money at stake, ComEd's monumental efforts are now characterized as the normal, ongoing costs of operating an electricity distribution system that are rightfully recovered from ratepayers. ComEd's about-face is remarkable." (GC Initial Brief at 24.) Staff witness Bruce Larson similarly observed, "It is regrettable that the culture of denial still pervades ComEd." (Staff Ex. 23.0 at 1.)

The Commission should not allow Edison to profit from its failure to honestly confront its past errors. To maintain the integrity of the factfinding process, the ARES Coalition respectfully requests that the Commission sever the non-residential portion of the instant proceeding and reject Edison's request to modify its non-residential delivery services rates. Once the non-residential portion of the instant proceeding is set aside, the Commission could adopt one of the methods proposed by Staff and GC and either (1) set the rates based upon the 1999 Edison DST Proceeding; or (2) set interim residential rates, to be modified at a later date based upon the audit and investigation of Edison's proposed revenue requirements.

**2. Impact on the Development of an Effectively
Competitive and Efficient Electricity Market**

Edison's Initial Brief fails to come to grips with the anti-competitive nature of its proposal. Instead of discussing the "impact" of its proposal upon the development of the competitive market in this portion of its Initial Brief, Edison improperly inserts a commercial

for itself as the champion of the competitive market. The factual foundation for this claim is as dubious as is its relevance.

Edison witness Juracek admitted that it has been opposed in proceedings related to delivery services by parties explaining how Edison's proposals have been anti-competitive. (*See* Tr. 3579.) The Commission surely recalls Edison's vigorous effort to advocate a competition-numbing "blind" lottery in 1999. (*See* ARES Coalition Ex. 3.0 at 3.) Moreover, even if Edison had been supportive of competition in the past, which it has not, the Commission should not allow Edison to "take a free shot" at destroying the competitive market in the instant proceeding. Indeed, if competition is developing well for non-residential customers, as Edison claims, the Commission should not allow Edison to abandon the current structure and rates. (*See* Edison Initial Brief at 5.) If it ain't broke – and Edison says it ain't – then don't fix it – especially not with the type "fix" that Edison proposes put in.

It is understandable that Edison does not desire to address the impact that its proposal would have upon the competitive market. In other portions of its Initial Brief, Edison essentially admits that its proposal would result in a migration of customers from competitive rates back to traditional bundled services rates, asserting that "during the transition period, bundled service is not some sort of disfavored status." (Edison Initial Brief at 33.) The ARES Coalition witnesses explained the fragile nature of the existing marketplace and the devastating impact that Edison's proposal would have upon it. (*See, e.g.*, ARES Coalition Ex. 2.0 at 8-21.)

The Commission must take into account the effect of the Edison DST filing upon the markets in which it is mandated to promote the development of competition. (*See* 220 ILCS 5/16-101A(d).) Staff properly notes that "higher [delivery services] rates would make delivery services a less attractive alternative to bundled rates and hinder, rather than advance,

competition.” (Staff Initial Brief at 18.) Of course, the magnitude of Edison’s proposed increase has correspondingly had an enormous negative impact upon competition. Indeed, as discussed in the ARES Coalition’s Initial Brief at 42 to 43, the mere fact that Edison has proposed such an attack on the existing levels and structure of delivery services rates and tariffs has done damage to the development of competition in Illinois.

The ARES Coalition identified at least three (3) immediate anticompetitive impacts that would result if the Commission were to approve Edison’s proposal. **First**, for most of the larger customers above 3 MW in demand, customer savings would be reduced, resulting in a substantial migration back to bundled service. (*See* ARES Ex. Coalition Ex. 1.0 at 7.) **Second**, Edison’s proposal would completely change the rules of the game for customers below the 3 MW level. **Third**, customers who have not yet opted for delivery services now are presented with even greater uncertainty and possible confusion than before.

The ARES Coalition has demonstrated that Edison’s DST filing is anti-competitive and anti-consumer action that: (1) seeks to dismantle much of the two-year-old competitive market; (2) would raise the rates of well over half of the load of current delivery services customers now, and in 2005, the rates of all bundled service customers, residential and non-residential alike; and (3) would deter current customers and new competitors from building a competitive electric business in Illinois. This is contrary to the objectives and legislative direction of the Customer Choice Act and contrary to the expectations of those who worked in good faith to enact the Customer Choice Act.

Approval of Edison’s proposal would be anything but a step to promote competition.

3. **Impact on Customers**

After ignoring the impact that its proposal would have upon the competitive market, Edison's Initial Brief is misleading, at best, in discussing the impact that Edison's proposal would have upon customers. Edison's Initial Brief resorts to overstating and mischaracterizing the testimony of its own witnesses in an attempt to assuage concerns about the rate shock that would result from its proposal. In fact, Edison has not presented any customer impact analysis and its attempt to claim otherwise simply is false. Failure to do so precludes a finding by the Commission that its rates are just and reasonable. (*See Citizens Utility Bd.*, 276 Ill. App. 3d at 738-39.) Moreover, its assertions regarding the comprehensive customer impact analysis that was performed by the ARES Coalition are baseless and disingenuous.

a. **Edison's Asserted "Customer Impact Analyses" Are Worthless**

The Commission should be suspicious when Edison makes assertions that sound too good to be true. The Commission should know by now that such assertions rarely, if ever, are as good as advertised. Such is the case with Edison's assertion at page 22 of its Initial Brief that "The overall impact on customers is quite simple – better service at little or no increased cost." Of course, true to form, Edison contradicts itself asserting that it intends to "show customers real costs and real prices," and letting it slip that its alleged improvement in reliability "is not free". (Edison Initial Brief at 24, 5.) As has been explained by Staff and many intervenors, Edison's assertion that its supposed improved service "is not free" is quite an understatement. (*See, e.g.*, Staff Report to the Commission, ICC Docket No. 01-0664, at 1; ARES Coalition Initial Brief at 7, 26, 31; TrizecHahn Initial Brief at 3-4; BOMA Initial Brief at 8-9.)

In addressing customer impacts, Edison's Initial Brief primarily relies upon **two (2)** assertions made by its witnesses, neither of which can withstand the weight that Edison now seeks to attribute to them. The **first** assertion relies upon artificially deflated transmission rates to hide the customer impact. The **second** assertion compounds the errors by relying not only upon the artificially deflated transmission rates, but also upon market value prices that are 35.5% lower than those contained in Edison's current Commission-approved tariffs. In short, Edison's analyses do not accurately depict the customer impact of Edison's proposal.

First, throughout its Initial Brief, Edison repeatedly asserts that "well over 90%" of Edison's non-residential customers would have **all** of Edison's proposed **\$752 million** rate increase offset by reductions in their CTCs. (*See, e.g.*, Edison Initial Brief at 22, 30, 31, 32.) This assertion, at its base, finds a bogus calculation that uses fictitious transmission rates, that even Edison's own witnesses disavowed. (*See* ARES Coalition Ex. 1.0 at 14-16; ARES Coalition 3.0 at 8, 32-34; ComEd Ex. 20 at 22, 23.) The ARES Coalition in its direct testimony filed on August 23, 2001, highlighted the misleading assumption regarding transmission rates contained in Edison's purported "CTC offset analysis." (*See* ARES Coalition Ex. 1.0 at 14.) Dr. O'Connor and Mr. Spilky noted that Edison improperly assumed that its transmission charges would **decrease** even though it was likely even then that its transmission rates would **increase**. (*See id.* at 14-15.) Dr. O'Connor and Mr. Spilky explained that "if Edison's assumption of decreasing transmission charges does not materialize as suggested in Edison's calculations, then the effect of increasing delivery services tariffs will have been understated in this proceeding since the assumed lower transmission charges tend to 'shield' or 'lessen' the effect of the proposed increase in the delivery charges included in Edison's figures." (*See* ARES Coalition Ex. 1.0 Appendix 1, p. vi.)

Dr. O'Connor and Mr. Spilky proved to be prophetic. On August 31, 2001, Edison filed a request for an enormous increase in its transmission rates. At first blush, it appeared that Edison was seeking **\$176.7 million** more in transmission rates than it originally advised the Commission it was seeking. (*See* ARES Coalition Ex. 3.0 at 29.) However, including the additional \$27 million that Edison has sought to "refunctionalize" from transmission to distribution, the actual understatement in Edison's "CTC offset analysis" is **\$204 million**. (*See* ARES Coalition Initial Brief at 48.) (The ARES Coalition's Initial Brief contained a typographical error. The correct amount of the transmission increase being sought is approximately \$204 million, not \$209 million.) Needless to say, such a miscalculation completely undermines any additional calculations or assertions that Edison has made relying upon these figures.

Edison did not address in its rebuttal testimony the issue of this obvious miscalculation and the accompanying misleading suggestion that its CTCs could absorb the rate increase. (*See* Tr. at 1237.) Dr. O'Connor and Mr. Spilky highlighted Edison's failure, noting that "Consistent with the way in which it has not been forthcoming in this proceeding, Edison did not address this issue in its rebuttal testimony, even though it had all of the information available to do so." (ARES Coalition Ex. 3.0 at 28.)

In Edison's surrebuttal testimony Edison witnesses Lawrence S. Alongi and Sharon M. Kelly admitted the flawed basis for their figures. As illustrated in the following pre-filed surrebuttal testimony, they disavowed any claim that their figures were to reflect the actual impact Edison's proposal would have upon customers:

Q. At page 32 of their rebuttal testimony Dr. O'Connor and Mr. Spilky claim, “Edison had led the Commission and other parties to believe that transmission rates would remain at their current levels or be reduced. (See Edison Ex. 13.0, Attachment E at page 2.” Is that true?

A. No. As specifically stated in ComEd Exhibit 13.0, Attachment E, the computations provided in that attachment are only **sample comparisons. Notes in the attachment specifically state that the data **are provided for illustrative purposes only**.**

(ComEd Ex. 50.0 at 11-12.) (Emphasis added.) That is, according to the sponsors of the testimony, the “CTC offset analysis” was not meant to reflect reality; and, as revealed by Dr. O'Connor and Mr. Spilky, it does not. The Commission should not allow Edison's attorneys to claim that this sow's ear is a silk purse.

Second, Edison asserts that using “current forward market prices” would yield “even more favorable results,” citing to the rebuttal testimony of Edison witness Juracek. (Edison Initial Brief at 23.) However, the rebuttal testimony of Ms. Juracek is the fruit of the poisonous tree, relying upon the base “CTC offset analysis” presented in the direct testimony of Edison witnesses Alongi and Kelly. (See ComEd Ex. 20.0 at 16; ComEd Ex. 20.1; ComEd Ex. 20.2.) However, Ms. Juracek's errors run further and deeper than those contained in the testimony of Edison witnesses Alongi and Kelly, because her “analysis” is not based upon the actual Commission-approved market values, but rather rely upon a guess of what the market values might be in 2002. (See ComEd Ex. 20.0 at 16.) As a result, Edison witness Juracek understates the existing market values by approximately 35.5%.

In Edison witness Juracek's surrebuttal testimony, Edison finally uses the “proposed” transmission rates[†], but it further hides the impact of its proposal by “predicting” that market values are going to be approximately 35.5% less than those that presently are in Edison's Commission-approved tariffs. (See ComEd Exs. 41.2, 41.3, 41.4, 41.5.) Of course, Edison

witness Juracek admitted that she provided no basis for the Commission to believe that the market prices that existed in October, 2001 (when she performed the calculation) would accurately reflect the market prices that will exist in March of 2002 (when the market values for the Power Purchase Option (“PPO”) will be reset). (*See* Tr. at 3595-96) Nor was Ms. Juracek able to identify the specific dates upon which the purported “snapshot” of market values was taken. (*See* Tr. at 3341.) In fact, Dr. O’Connor explained that historically market values in October are poor predictors of what the market prices will be the following March and provided data demonstrating the point. (*See* Tr. at 820-21.) As Exelon Chairman John Rowe in his recent luncheon presentation to the Illinois Energy Leadership Conference, noted regarding Edison’s ability to project energy prices: “We don’t even predict within six month periods very well.” (ARES Cross Ex. 93, 94.) Ms. Juracek’s prediction has no credibility.

On cross examination, Edison witness Juracek was forced to admit what would happen if Edison were to take the Commission-approved market values, and analyze Edison’s proposed transmission and distribution rate increases. (*See* Tr. at 3350-52.) Ms. Juracek had presented in her rebuttal testimony a hypothetical customer, and she indicated that using her “predicted” market values, the hypothetical customer could receive a savings of 8.5% by taking competitive service. (*See* ComEd Ex. 41.0 at 16.) However, using the Commission-approved market values, Ms. Juracek admitted that her hypothetical customer would receive a 3.7% penalty if it were to take competitive service. (*See* Tr. at 3350-52; ARES Cross Ex. 80.) That is, if Edison’s proposal were approved, all else being equal, this customer and all others like it, likely would remain on bundled service rather than enter the competitive market.

Thus, Edison’s two (2) asserted “analyses” that are the bases for Edison’s oft-repeated assertion of “little or no customer impact” are of less than no value to the Commission. The

first “analysis” even its authors admit is based upon trumped up figures. The second analysis relies on these admittedly incorrect figures and further relies on inherently unreliable “predictions” of what the market values will be in 2002. It would constitute reversible error for the Commission to rely upon either of these asserted “analyses.”

**b. The Customer Impact Analyses Presented By The
ARES Coalition Demonstrate The Actual Enormous Negative
Impact That Edison’s Proposal Would Have Upon Customers**

As discussed at length in the ARES Coalition’s Initial Brief at pages 46 to 53, AES NewEnergy and Enron both prepared detailed customer impact analyses, reviewing the impact that Edison’s proposed rates would have upon their respective customer bases. Unlike Edison’s flawed and hypothetical analyses, those prepared by the ARES Coalition used Edison’s current and proposed transmission rates. (See ARES Coalition Ex. 1.0 at 14; ARES Ex. 2.0 at 14; ARES Coalition Ex. 3.0 at 6, 8.) Also unlike Edison’s analyses, the “base cases” that were presented by the ARES Coalition also relied upon the current Commission-approved market values. Thus, the analyses performed by AES NewEnergy and Enron are the only hard evidence the Commission has regarding the impact of Edison’s proposal. The criticisms that Edison asserts in its Initial Brief are baseless and disingenuous.

To recap the primary results of the ARES Coalition’s customer impact analyses, which took into consideration Edison’s proposals both in the instant proceeding and at FERC and used the current Commission-approved CTCs, it demonstrated that:

- ?? **Edison’s assertion that increases in delivery services rates are offset by decreases in CTCs is false.** Well over 85% of customers would experience net rate increases as a result of the fact that their CTCs are not large enough to “absorb” Edison’s proposed increases in transmission and distribution rates.
- ?? **Almost 100% of the sales volume would experience a reduction in savings.** Excluding the several Rider HVDS-eligible accounts, almost

the entire sales volume would experience a savings reduction if the full revenue increase is levied across the board rather than subject to Edison's proposed rate design changes.

?? **The average savings reduction would be nearly 4%.** For customer accounts that experience a savings reduction, the average impact would be about 4%, half the average 8% savings intended by the General Assembly to be the mitigation factor.

?? **The types of customers that would experience the greatest increase are the types of customers that present significant opportunities for savings under the existing delivery services rates.** Under the existing delivery services tariffs, there is an incentive to serve (1) larger customers and (2) smaller customers with lower-than-average load factors. These two types of customers are among those that would be hardest hit by Edison's proposal.

(See ARES Coalition Initial Brief at 50 to 51.) Based upon the ARES Coalition's analyses, there can be no doubt that the customer impact of Edison's proposal, if it were approved, would be devastating to the savings structure established by the General Assembly and the Commission.

Edison's only response to this thorough analysis is to make two (2) spurious assertions regarding the ARES Coalition's methodology. (See Edison Initial Brief at 23.) Ironically, Edison's criticisms are more applicable to its own asserted "customer impact analyses" than to those presented by the ARES Coalition.

First, Edison asserts that the ARES Coalition's analysis is based upon a "distortion of ComEd's proposed transmission rates". (See *id.*) As noted above, this is an appropriate criticism of Edison's "analyses," not those of the ARES Coalition. Unlike Edison's "CTC offset analysis," the ARES Coalition's original analyses relied upon Edison's existing transmission rates. (Compare ARES Coalition Ex. 1.0 at Appendix 1 with ComEd Ex. 13.0CR at Att. G.) Edison did not challenge the ARES Coalition's original calculation of transmission rates. (See ARES Coalition Ex. 3.0 at 28.) In the ARES Coalition's rebuttal testimony, Dr.

O'Connor and Mr. Spilky calculated the impact of Edison's proposed transmission rates. (*See id.* at 6 to 8, 32-48.) Again, Edison did not take issue with this calculation; in fact, Edison's witnesses confirmed it and adopted that calculation as their own in their surrebuttal testimony. (*See* Tr. at 1239; ComEd Ex. 41.2.) It was Edison that played games with the transmission rates, not the ARES Coalition.

Second, Edison asserts that the ARES Coalition's analyses are based upon "a variety of mistaken assumptions about the market value of power and energy." (Edison Initial Brief at 23.) To paraphrase the children's saying "We're rubber, you're glue, what you say bounces off us, and sticks to you!" That is, this criticism is more appropriately directed at Edison's own analyses. The ARES Coalition's "base case" used the market values in Edison's current Commission-approved tariffs. (*See* ARES Coalition Ex. 1.0 at 12-1; Appendix 1 at 6; ARES Coalition Ex. 2.0 at 14; ARES Coalition 3.0 at 31.) It was Edison that included a "mistaken assumption" about market values – namely, that it could predict in October what the market values would be in March. (*See* Tr. at 3600-01. *See also* Tr. at 20-22.)

The ARES Coalition did present **additional** analyses, beyond its "base case," reflecting the potential impact of a possible 5% or 10% increase in market values; but unlike Edison's hidden "number games," the assumptions behind these further analyses were both fully disclosed and fully justified. (*See* ARES Coalition Ex. 1.0 at 16-17; ARES Coalition Ex. 2.0 at 14; Tr. at 822.) As explained by Dr. O'Connor and Mr. Spilky, the Commission-approved market values increased **more than 15%** from March 1999 to March 2000, so it is not credible for Edison to assert that illustrating the impact of 5% increase is misleading. (*See* ARES Coalition Ex. 1.0 at 16-17.) Moreover, the purpose of presenting the potential impact of a 5% increase in market rates was to illustrate that the **combined impact** of an increase in market

values and Edison's proposed delivery services increase is **greater than the sum of the parts**. (See ARES Coalition Ex. 1.0 at Appendix 1, p. x.) Edison does not, and cannot, dispute this conclusion.

It is likely that Edison, in its Reply Brief, will mimic other erroneous assertions made by Edison's witnesses regarding the ARES Coalition's analyses, but these have been anticipated and addressed in the ARES Coalition's Initial Brief. For example, Edison may assert that the "sample size" was too small; but as noted in the ARES Coalition's Initial Brief at page 47, while the customers surveyed are only a segment of the existing market, the methodology of the AES NewEnergy and Enron studies allows for extrapolation of the results to the overall population of customers currently on or eligible for delivery services. Edison has not presented any legitimate criticism of the methodology, which this inconsistent with sound sampling practices, or the conclusions of that analysis.

Moreover, as aptly noted by GC, Edison has the burden of proof in the instant proceeding. (See GC Initial Brief at 6; 220 ILCS 5/9-201(c).) It was incumbent upon Edison to present a customer impact analysis. Edison's failure to present a customer impact analysis of its proposed rate increase precludes a Commission finding that Edison's proposed rates are just and reasonable. (See *Citizens Utility Bd.*, 276 Ill. App. 3d at 738-39.) Edison's failure to provide such an analysis provides an independent justification for the Commission to sever and dismiss the non-residential portion of the instant proceeding.

It is apparent from the results of the ARES Coalition's studies that Edison is seeking a decision from the Commission that would drive many current delivery services customers back toward or even onto bundled service by reducing the level of savings available for such customers. In short, the ARES Coalition has provided the Commission with a meaningful tool

to determine the likely customer impact of Edison's proposal. The impact would be devastating to the development of a competitive market. The Commission should not allow Edison to increase its non-residential DST rates in order to achieve this result.

4. Impact on Future Rate Cases

The ARES Coalition agrees with Edison that "To portray this proceeding as simply the setting of cost-based rates pursuant to the Commission's obligations under the Public Utilities Act, however would not do justice to the significance of the Commission's undertaking." (Edison Initial Brief at 2.)[†] The ARES Coalition likewise agrees that "the decisions that the Commission will make in this proceeding, as in Docket No. 99-0117, are important to all market participants, in terms of the continuing development of the retail electric market." (Edison Initial Brief at 39-40.) However, contrary to Edison's assertions, aspects of Edison's proposal ultimately will affect all Edison ratepayers, and the effect of the proposed rate base additions will be significant and extend beyond the instant proceeding. (*See* ARES Coalition Initial Brief at 53; GC Initial Brief at 14.)

As outlined in the ARES Coalition's Initial Brief at pages 53 to 55, the Edison DST filing currently before the Commission has significant implications for a likely general rate proceeding at the close of the mandatory transition period case in 2005. In the 2005 rate proceeding, the Commission would be faced with hefty increase for all ratepayers as Edison's rates would be based upon atypical expenses. Accordingly, the ARES Coalition and GC have cautioned the Commission that the instant proceeding serves as a "**Trojan Horse**" for the 2005 rate proceeding. (*See* ARES Coalition Initial Brief at 2, 53-55; GC Initial Brief at 14.) The

[†] While the ARES Coalition agrees with this statement in Edison's Initial Brief, true to form, Edison's Initial Brief again contradicts Edison's witnesses. Edison witness Juracek swore in her testimony that "It is a proceeding to establish cost-based delivery services rates. Nothing more, nothing less." (ComEd Ex. 20.0 at 26.)

Trojan Horse effect would result in a rate increase that is comparable to those increases experienced through the 1980s and early 1990s for the addition of nuclear power plants into ratebase that triggered the rate shock and customer revolt that led to the enactment of the Customer Choice Act.

Edison's plan is clear: hobble competition in the short term and saddle all ratepayers with enormous rate increases in the long term. (*See* ARES Coalition Initial Brief at 2-3.) Contrary to Edison assertions at page 40 of its Initial Brief, Edison seeks to force the Commission to lock into a set of decisions now that will have severe ramifications for all ratepayers into the future. (*See* ARES Coalition Initial Brief at 53.) As Dr. O'Connor and Mr. Spilky explained, the "more sinister truth" is that the Edison filing contains a "ticking time bomb." (*See id.*) The Commission must take steps now to ensure that it retains its flexibility for the 2005 general rate case.

As illustrated in the ARES Coalition's Initial Brief at page 54, to the extent that the Commission accepts any key elements of Edison's overall proposal, including large distribution rate base additions, the re-allocation of substantial expenses from the production function to the delivery function, the packing of the test year with significant atypical expenses, the failure to reflect merger savings, and the reflection of supposed supply risks in the cost of capital for the delivery function, the Commission will have set the process in motion which likely will result in a **major rate increase in 2005**.

The ARES Coalition respectfully requests that the Commission carefully consider these facts before it enters its Order in the instant proceeding.

5. Impact on Cost Based Rates

As Edison correctly notes, the Customer Choice Act requires Edison's delivery services rates to be based upon prudently incurred costs and used and useful distribution capital investments. (*See* Edison Initial Brief at 35. *See also* 220 ILCS 5/16-108.) Due to its failure to present evidence, much less substantial evidence, Edison is forced to rely upon sweeping assertions in its attempt to satisfy its burden of proof. (*See* Edison Initial Brief at 6-7, 35.)

The original company line was that this is a "proceeding to establish cost-based delivery services rates. Nothing more; nothing less." (Edison Ex. 20.0 at 26-27.) Edison has again changed its tune. In fact, Edison cites to irrelevant "evidence" regarding delivery services rates of electric utilities in other jurisdictions, suggesting that its proposed rules would be well below the average and implying that it is somehow entitled to even more than the dollar-for-dollar recovery it has proposed in the instant proceeding. (*See* Edison Initial Brief at 37.) Certainly, this "evidence" lacks credibility, let alone relevance to the Commission's determination of just and reasonable rates in the instant proceeding. Moreover, this "evidence" does not take into consideration the fact that Edison has also requested an increase in its transmission rates of 115% when its proposed refunctionalization is taken into account. (*See* ARES Coalition Initial Brief at 49.) Once the full picture is painted, it is evident that Edison's rates rather than being 2.05¢/kWh on average would be 2.23¢/kWh on average, and would be just below the median of even those companies presented by Edison itself for comparison.

As discussed in the ARES Coalition's Initial Brief at page 55, Edison's DST filing undermines the principle that delivery services customers should pay only for those reasonable costs that are related to the provision of the services that are necessary for the operation of the transmission and distribution system. (*See* 220 ILCS 5/16-102, -108.)

The evidence in the record demonstrates that:

?? Edison has taken the residential DST filing required by the Act as an opportunity to request a massive increase to non-residential delivery services rates by shifting costs previously allocated or assigned to the production function to the delivery services function. (See ARES Coalition Initial Brief at 55.) The effects of the “re-functionalization” and accompanying non-residential delivery services rate increase or “Trojan Horse” would be to push many customers back toward bundled service and to lock in a major general rate increase for all customers that will take effect in 2005.

?? Edison is seeking to improperly burden only delivery services customers with power supply costs that are not directly or indirectly related to the provision of services necessary to the delivery of power and energy. (See ARES Coalition Initial Brief at 55; 65-71.)

Edison was required under the Act to propose delivery services tariffs to allow residential customers to exercise choice by May 1, 2002. However, the Commission is under **no** obligation to approve Edison’s proposed increase in non-residential delivery services rates in the instant proceeding. (See ARES Coalition Initial Brief at 56. See also Staff Response, ICC Docket No. 01-0664 at 11-12.) Non-residential customers already are taking services under rates that the Commission has determined are “cost based.” Edison has failed to meet its burden of proof that its proposed rates and tariffs are just and reasonable. Accordingly, the ARES Coalition respectfully requests that the Commission reject Edison’s proposal to change those non-residential delivery services rates and tariffs at this time.

6. Impact on Distribution Adequacy and Reliability

7. Impact on Capital Markets and Cost of Capital

II. REVENUE REQUIREMENT ISSUES

As explained in the ARES Coalition’s Initial Brief, the Commission should take the following steps in order to set just and reasonable rates in the instant proceeding:

- (1) Sever the non-residential portion of Edison’s proposed rate increase;

- (2) Determine the appropriate amount of an increase over the 1999 DST rates by:
 - (a) excluding imprudent and unreasonable expenditures; and
 - (b) rejecting Edison's proposed re-design of its rates and re-functionalization of its costs; and
- (3) Direct that any increase be phased-in over a five-year period.

(See ARES Coalition Initial Brief at 58-60.)

As GC properly recognized, Edison failed to prove that its proposed DST test year revenue requirement consists entirely and only of prudent investments and other just and reasonable expenditures. (See GC Initial Brief at 2.) The ARES Coalition agrees with GC that Edison's failure is "unacceptable" based upon the dramatic 50% proposed increase in DST rates from those found by the Commission to be just and reasonable less than two years ago. (See *id.* at 2.)

Additionally, as discussed in the Executive Summary above, the Commission should initiate a management audit and investigation of Edison to examine the reasonableness, prudence, and efficiency of Edison's operations, costs, management decisions, and functions for the period leading up to, and including calendar year 2000. Staff, GC, other customer groups, and the ARES Coalition were all in agreement that Edison's appropriate revenue requirement for delivery services based upon a proposed 2000 test year **cannot** be established until such a management audit and investigation is completed. (See Staff Initial Brief at 6; GC Initial Brief at 3; TrizecHahn Initial Brief at 3-4; BOMA Initial Brief at 9; ARES Coalition Initial Brief at 9, 12-13.)

As discussed in the ARES Coalition's Initial Brief at page 58, the Commission could proceed to establish the required residential delivery services rates using either the revenue requirements from the 1999 Edison DST Proceeding or modifying Edison's proposal in the

instant proceeding. As discussed above, the Commission should leave in place the existing non-residential delivery services rates. The Commission should find that Edison has utterly failed to meet its burden of proof with respect to any change from the existing DST rates and DST tariffs for non-residential customers.

However, if the Commission decides to adopt a revenue requirement based upon the evidence submitted in the instant proceeding, the Commission should rely upon the total revenue requirement proposed by GC. (*See* GC Initial Brief at 25.) Additionally, the Commission should adopt some of the specific adjustments to the rate base and revenue requirements presented by the Staff. (*See passum* Staff Initial Brief at 6-72.) Finally, the Commission also should take the following steps related to Edison's proposed rate design:

- (1) Reject Edison's proposal to abandon the current DST rate design, including:
 - (a) Edison's marginal cost of service study;
 - (b) Edison's proposed Rider HVDS;
 - (c) Edison's proposed annual demand ratchet;
 - (d) Edison's proposals to abandon the current rate design for the Single Bill Option ("SBO") and for Meter Service Providers ("MSPs");
- (2) Reject Edison's proposal to the extent that it results in increased rates that exacerbates the already adverse open access conditions for Rider 25 customers;
and
- (3) Approve Edison's proposed changes to Rider ISS, with the modifications to the 10% penalty adder that are discussed in ARES Coalition witness Marc Ulrich's testimony.

As discussed in the ARES Coalition's Initial Brief at page 60, these changes to Edison's proposed revenue requirements and rate design are necessary regardless of whether the Commission severs the non-residential portion of the instant proceeding.

The ARES Coalition respectfully requests that the Commission enter an Order to revise Edison's proposed revenue requirements and rate design consistent with the recommendations above and those contained at pages 58 to 109 of the ARES Coalition's Initial Brief.

A. CALCULATION OF REVENUE REQUIREMENT

As discussed in the ARES Coalition's Initial Brief at page 60, Edison's request for a **37%** rate increase in its distribution charges, designed to yield **47.5%** more in delivery services revenues, is of a magnitude that would drive many customers back to bundled service. A number of other parties properly have highlighted the striking magnitude of Edison's proposed rate increase in its delivery services charges. (*See* GC Initial Brief at 2, 19-20, TrizecHahn Initial Brief at 2, 11-12, BOMA Initial Brief at 2, 5.)

The Commission must consider Edison's extraordinary request in light of the events that drive the proposed rate increase -- the remedial measures taken by Edison following the repeated and well-publicized outages on the utility's system during 1999. (*See* GC Initial Brief at 20.) Edison described its efforts as a "comprehensive investigation" that industry observers described as "unprecedented in the history of publicly-owned utilities." (*See* GC Initial Brief at 21. *See also* City Cross Ex. 22 at A.1.) As Edison acknowledged to the Commission, the problems discovered were so formidable that the "management of its distribution business requires" nothing less than "truly radical change" (*See* GC Initial Brief at 21. *See also* City Cross Ex. 22 at A.2 (emphasis in original).) These radical changes amounted to a **\$1.5 billion**

recovery program over a two year period. (*See* GC Initial Brief at 22. *See also* City Cross Ex. 22 at A.3).)

However, ratepayers were misled by Edison that they need not worry about these extraordinary expenditures. (*See* ARES Coalition Initial Brief at 4-8; GC Initial Brief at 22-23.) As the evidence in the record of the instant proceeding demonstrates – Edison has had a change of heart and now disclaims or contradicts the many dramatic statements that it has made to the public, the Commission, and its shareholders since the 1999 outages. (*See* ARES Coalition Initial Brief at 4-8; GC Initial Brief at 24.)

Edison is asking the Commission to believe that the following unusual costs are ordinary and necessary ongoing expenses that Edison will continue to incur in order to operate its transmission and distribution system:

- ?? A “24 hour/7 days a week campaign to repair, replace or upgrade major equipment such as transmission lines, substations, feeder cables and other components.”
- ?? The buyout of “complete factories of transformer capacities.”
- ?? Using “as many outside contractors as [ComEd] could find.”
- ?? Using “people from around the world working on [the two-year recovery program], on designs, equipment installations.” and
- ?? Having “all of [its] resources, . . . [at] a minimum, working 60 hours a week.” (*id.*)

As GC duly notes, with money at stake, Edison’s unprecedented and truly radical actions are now being characterized as the normal, ongoing costs of operating an electricity distribution system the costs of which Edison should be allowed to recover from ratepayers. (*See* GC Initial Brief at 24.)

The ARES Coalition agrees with GC that it is not credible for Edison to assert that the costs associated with its “unprecedented” and “radical changes” are:

?? No different than the type of changes that any operator of an electricity distribution system makes from time to time. (*See* GC Initial Brief at 23. *See also* ComEd Ex. 19 at 3.)

?? The types of changes that many distribution companies have found they need to make. (*See* GC Initial Brief at 23. *See also* Tr. at 2620.)

As discussed in the ARES Coalition’s Initial Brief at pages 60-61, the Commission should take three important steps to properly calculate the revenue requirement: (1) sever the non-residential portion of Edison’s proposal from the instant proceeding; (2) disallow all imprudently incurred or unreasonable costs; and (3) spread out recovery of any remaining rate increases over a period of five years in a manner that would backload the impact so that the major increase would occur intandem with the re-setting of bundled service rates.

However, if the Commission feels compelled to calculate the revenue requirement based upon the record in the instant proceeding, the ARES Coalition recommends that the Commission adopt GC witness Effron’s proposed \$1,372,351,000 revenue requirement subject to certain recommendations in this Reply Brief that may differ modestly from specific GC proposed adjustments. GC’s proposal is approximately \$414,618,000 less than that originally proposed by Edison.

B. SELECTION OF TEST YEAR

As discussed at page 61 of the ARES Coalition’s Initial Brief, Edison certainly is free to select a historical test year, such as the calendar year 2000 it has chosen for the instant proceeding, when it possesses the legal authority to file a rate case. Edison continues to

suggest there is opposition to use of the test year. This is but an effort to distract the Commission from, the real subject. Staff and Intervenors properly note that in selecting the 2000 test year, Edison has chosen to include numerous impermissible items, resulting in efforts to recover in delivery services rates, costs that largely are unrelated to delivery services, costs that greatly exceed those approved in the 1999 DST proceeding, or costs that were not prudently incurred. (See ARES Initial Brief at 61; GC Initial Brief at 2-3, 7-8, 20-25, Staff Initial Brief at 6.) The ARES Coalition agrees with Staff, GC, BOMA, and TrizecHahn that the Commission should not set permanent rates based on a calendar 2000 test year until an investigation and audit is completed. Without an independent expert conducting an in depth investigation, the Commission cannot be assured that Edison's proposed rates are just and reasonable and in compliance with the Act.

As the Commission is aware, it is not appropriate to blindly apply test year revenues and expenses in setting utilities' rates. If test year revenues and expenses contain abnormal operating conditions, such as unusual weather or atypical equipment failures, the test year data do not reflect normal conditions and the data should be adjusted. (See *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 219 (1989). See also *City of Evansville v. Southern Indiana Gas and Electric Co.*, 167 Ind. App. 472, 478, 339 N.E.2d 562, 568 (2nd Dist. 1976).) If test year results are unrepresentative, appropriate adjustments must be made. (See *City of Evansville*, 339 N.E.2d at 568.)

The record demonstrates that the 2000 test year falls in the middle of a period of near panic activity and spending by Edison in an effort to play catch-up for years of malign neglect to the requirements of an effective and reliable distribution system. (See ARES Coalition Initial Brief at 61-64; GC Initial Brief at 25.) The conclusion is inescapable that the year 2000

was one of the most atypical imaginable in terms of delivery system investment, attention and spending in recent memory. The Commission need not call into question the obvious necessity of Edison's long-overdue effort to improve the distribution system. Rather, the Commission should take note of what Edison admitted earlier but now in its Initial Brief has tried to conceal: **that year 2000 was an atypical year.**

Since the year 2000 was so obviously atypical, the Commission should take steps to properly "normalize" expenses and extraordinary capital additions over a reasonable period. (*See* ARES Ex. 1.0 at 45.) As will be discussed in greater detail below, both Staff and GC have presented the Commission with appropriate recommendations to normalize and adjust certain expenditures. The ARES Coalition respectfully requests that the Commission act to preserve the integrity of the test year rules and normalize the expenditures that Edison seeks to recover in the instant proceeding.

C. Rate Base

1. Functionalization of Distribution Plant

2. General and Intangible Plant -- Direct Assignment and Allocation

Staff and intervenors are in agreement that the Commission should direct Edison to use a labor allocator to functionalize General and Intangible Plant and Administrative and General (A&G) Accounts to distribution. (*See* Staff Initial Brief at 7; GC Initial Brief at 26-27; IIEC Initial Brief at 4-9.) Edison is alone in its proposal to utilize a hybrid direct assignment methodology, with a variety of allocation factors, to functionalize General and Intangible Plant and Administrative and General (A&G) Accounts to distribution. (*See* Edison Initial Brief at 43-44.)

The record in the instant proceeding supports two conclusions concerning the functionalization of General and Intangible Plant and A&G accounts to distribution. **First**, the

parties overwhelmingly agree that a general labor allocator is more reasonable and more equitable than a direct assignment approach. In the 1999 DST proceeding, the Commission reached the same conclusion and approved the use of a labor allocator for the functionalization of General and Intangible Plant and A&G accounts. (*See* Order, 1999 DST Proceeding at 11, 27.) Edison has failed to offer any credible evidence in this proceeding to deviate from the Commission's Order in the 1999 DST proceeding. (*See* Edison Initial Brief at 43-45.)

Second, the ARES Coalition supports the use of Staff's proposed labor allocator for these accounts. As indicated in Staff's Initial Brief at page 7, Staff's labor allocator appropriately takes into consideration the labor, not only for Edison's existing production plants, but also for the fossil plants sold to Midwest Generation in order to properly account for their share of General and Intangible and A&G accounts. Edison will be fairly compensated for any related costs through the CTC, just as the Act requires.

Staff appropriately highlighted in great detail the various inconsistencies contained in Edison's proposed functionalization methodology, including internal inconsistencies between Edison witness Hill's direct, rebuttal, and surrebuttal testimony, inconsistencies with the Company's proposed methodology in the 1999 DST proceeding, and the inconsistency with the methodology approved by the Commission in the 1999 DST proceeding. (*See* Staff Initial Brief at 6-16.)

While the IIEC and the GC both offer proposed adjustments to the functionalization of General and Intangible Plant and A&G expenses based upon the labor allocator adopted by the Commission in the 1999 DST proceeding, Staff's approach is superior in two respects. First, Staff's adjustment covers General Plant, A&G accounts and Intangible Plant. (*See* Staff Initial Brief at 16.) Second, Staff's adjustment takes into consideration the fossil plants sold by

Edison prior to the proposed 2000 test year. (*See id.* at 16.) As Staff appropriately notes, this adjustment is particularly appropriate considering that the decision to sell those plants was Edison's alone. (*See id.* at 17.) Given Edison's tangible **\$4.813 billion** that it received from the sale, ratepayers should not be penalized by a reallocation of General and Intangible Plant and A&G account balances to delivery services.

- 3. Known & Measurable Changes to Test Year Plant Balances**
- 4. Other Adjustments to Rate Base**
 - a. Budget Payment Plan**
- 5. Plant Adjustments**
 - a. Plant Expenditures for Q2 2001**

The ARES Coalition supports the Staff and CG proposed \$11.038 million adjustment to Edison's ratebase in order to properly include only that portion of actual amounts incurred through June 2001. (*See* Staff Initial Brief at 20-21; GC Initial Brief at 27-29.)

- b. Proposed Retired Plant**
- c. Retirements Related to 2001 Replacement Plant**
- d. Accumulated Depreciation Adjustment
Related to Overtime and Alleged Premiums Paid**
- e. Deferred Taxes Related to Overtime and Alleged Premiums
Paid**

6. Prudence of Distribution Capital Investment Costs

As the Commission is well aware, from July through September of 1999, Edison experienced well-documented and widespread, outages on its distribution system. (*See* ARES Coalition Initial Brief at 62; GC Initial Brief at 31; Staff Initial Brief at 26.) As a result of these outages, Edison began an unprecedented construction and maintenance program ("recovery program") to upgrade its facilities. (*See* Staff Initial Brief at 26.) Edison blames the "Commission, customers, mayors, and legislators" for these expenditures. (*See* Edison Initial Brief at 1.) However, as properly explained by Staff, "both internal and external audits

revealed that many parts of ComEd's distribution infrastructure were **woefully inadequate.**" (Staff Initial Brief at 26-27.) (Emphasis added.) Edison has no one to blame but itself.

As discussed in greater detail in Section II. above, and as evidenced by the support of GC's Request for an Investigation and Audit, the prudence of Edison's proposed distribution capital investment costs as part of its recovery program is the most contentious issue in the instant proceeding. Staff and a number of the Intervenor's spent countless hours and issued multiple rounds of data requests in an attempt to determine the reasonableness and prudence of those expenditures. However, Edison refused to provide any meaningful response to those data requests and engaged in a scheme of obfuscation rather than candor regarding the quantification of costs related to its 2-year recovery program. (*See* GC Initial Brief at 29. *See also* GC Ex. 4.1.) As a result, GC was forced to file its Petition for an Investigation and Audit. GC's Petition has been supported by Staff and AES NewEnergy in the Investigation and Audit Proceeding and by the ARES Coalition, BOMA, IIEC and TrizecHahn in the instant proceeding. (*See* Staff Initial Brief at 6; GC Initial Brief at 3; TrizecHahn Initial Brief at 3-4; BOMA Initial Brief at 9; IIEC Initial Brief at 9-10; ARES Coalition Initial Brief at 9, 12-13.)

The parties agree that Edison made a deliberate decision not to quantify the costs called into question by its past imprudence in system investment and maintenance. (*See* ARES Coalition Initial Brief at 3; GC Initial Brief at 30.) However, Edison has chosen to be less than forthcoming in an thinly-veiled attempt to completely ignore its past imprudence and mismanagement. Edison would prefer if the Commission, and Edison's ratepayers, simply ignored its substantial mismanagement prior to the 2000 test year that directly resulted in sub-standard condition of Edison's distribution system.

As properly explained by Staff, there was widespread evidence from both Edison and independent experts regarding the possibility of imprudent costs. (*See* Staff Initial Brief at 27 - 36.) Some of the instances that Edison would prefer that the Commission ignored are that the Liberty Report found that:

?? Edison's primary criterion for distribution expenditures in the 1990s was to **minimize cost;**

?? Edison allowed equipment loadings to become very high, which resulted in overloading of alternative equipment; and

?? Edison allowed for a large backlog of maintenance, which increased the probability of an outage.

(*See id.* at 27.) Additionally, Edison's own "Transmission and Distribution Investigation Report" ("A *Blueprint for Change*") revealed serious issues in the transmission and distribution system and offered five major recommendations in the areas of maintenance, equipment protection and monitoring, T&D load and capacity, T&D System Optimization, and organization and management. (*See id.* at 28.)

The ARES Coalition agrees with Staff that "it is apparent from ComEd's report and from the Liberty report that ComEd failed to adequately plan and maintain their distribution system." (Staff Initial Brief at 32.) There is no other plausible conclusion. When Edison's failures of the past reached a boiling point and the distribution system collapsed, Edison was forced to undertake "unprecedented and extraordinary" measures in a short period of time prior to the summer of 2000 (*See id.*). Some of these extraordinary measures and imprudent actions included paying premiums to contractors, overtime expenditures, inflated prices for transformers, the addition of numerous 138kV transformers, and equipment failures. (*See* Staff Initial Brief at 34-35.)

Based upon the record of the instant proceeding, the Commission must conclude that Edison failed to meet its statutory burden of proof as to the prudence or reasonableness of its recovery program expenditures. Staff has recommended that a total of \$30,071,00 in distribution plant be disallowed due to Edison's imprudence but noted that there are likely many other areas of imprudent costs that are included in Edison's proposal. (*See id.* at 35.) Accordingly, the ARES Coalition respectfully requests that all of the imprudent costs at issue be removed from the proposed rate base and revenue requirement.

- a. Affect of Alleged Imprudence on Rates**
- b. Prudence of Specific Distribution Capital Investments in Rate Base**
- c. Request for Audit of New Distribution Capital Investment Costs**

As discussed above in the Executive Summary and Sections IA. and II, GC and Staff have proposed an investigation and audit of the new distribution capital investment that Edison seeks to recover from ratepayers in the instant proceeding. Contrary to Edison's assertions at page 61 of its Initial Brief, the evidence in the record as well as Edison's questionable conduct in discovery, mandates that the Commission conduct such an audit. (*See* GC Initial Brief at 36-43. *See also* Ex. 1.0 at 29-40; GC Ex. 2.0 at 35-39; GC Ex. 3.0 at 19-20.)

GC accurately describes Edison's position as "we made the investments and incurred the expenses reported for the test year, the investments and costs are prudent and necessary, therefore we should recover them in rates on a going forward basis." (*See* GC Initial Brief at 40.) However, without evidentiary support, Edison requests that the Commission set rates based on atypical test year. (*See* Edison Initial Brief at 11,15,41-42. *See also* GC Initial Brief at 41.) Edison's assertions belie its own testimony, and public statements regarding the extraordinary effort to become a "reliable distribution company during this time period.

Again, a number of parties, including Staff, GC, and the ARES Coalition requested that Edison quantify the impact of the recovery program on the test year revenue requirement and on prior years. (*See* GC Initial Brief at 30; ARES Coalition Initial Brief at 39, 73.) However, Edison refused to do so. Without an investigation and audit, the Commission cannot set just and reasonable rates as required by the Act.

The ARES Coalition recommends that the Commission initiate an investigation and audit of the Company's T&D recovery program expenditures, in order to determine whether Edison's proposed test year revenue requirement is just and reasonable. The reasons have been well-documented in the record. (*See*, e.g., GC Initial Brief at 37.) The ARES Coalition agrees with GC that if the Commission decides not to initiate an investigation and audit, it should reject Edison's proposal and set the delivery services rates based upon the revenue requirements established in the 1999 Edison DST proceeding.

7. Other Rate Base Issues

D. Operating Revenues And Expenses

- 1. Recommended Operating Income Statement**
- 2. Operating Revenues**
- 3. Operating Expenses**
 - a. Functionalization Of Generation, Transmission, And Distribution Expenses**

In its Initial Brief, Edison fails to be forthcoming regarding the fact that a large portion of the proposed increase in delivery services charges is due to Edison requesting that the Commission allow it to reclassify expenses into delivery services that the Commission previously attributed to the generation and supply function. (*See* Edison Initial Brief at 63. *See also* ARES Coalition Initial Brief at 65.) Edison improperly has proposed to transfer into "delivery services" at least **\$39.5 million** in expenses from accounts that were allocated to

supply in the 1999 DST case. (*See* ARES Coalition Initial Brief at 65.) Additionally, Edison has proposed an additional **\$27 million** be transferred from transmission to distribution. (*See id.*) Edison merely resorts to its use of factually inaccurate and misleading statements that it submitted “overwhelming and for all practical purposes uncontradicted evidence” regarding its functionalization.

As discussed in the ARES Coalition’s Initial Brief at pages 65 to 66, the reallocations now proposed by Edison are the result of a cost accounting system (“CBMS”) that cannot be relied upon since it is being used for the first time to identify costs as associated with different functions, has not been vetted or properly reviewed by the Staff, and has not been subject to an independent verification of its accuracy. (*See* ARES Coalition Initial Brief at 65-66. *See also* Tr. at 1661.) Essentially, Edison is telling the Commission and its ratepayers to rely upon Edison’s strategy of “trust us, we would not lead you astray.” (*See* ARES Coalition Initial Brief at 66. *See also* ARES Ex. 3.0 at 53.) As discussed in the ARES Coalition’s Initial Brief at pages 66 to 71, there is ample evidence in the instant proceeding demonstrating why such trust is not deserved since none of the Edison witnesses offer any meaningful support and verification for the accuracy of the CBMS system. The evidence presented by Edison’s own witnesses highlight the fact that the allocation of costs should be thoroughly reviewed by the Staff, to ensure that Edison’s proposed rates are just and reasonable. (*See id.*)

As stated herein and in the ARES Coalition’s Initial Brief at page 70, the Commission should **reject** Edison’s attempt to “re-functionalize” costs to delivery services that in the 1999 DST proceeding were categorized as “supply” or transmission costs for the following six (6) independent reasons:

- (1) The newness of the CBMS cost accounting process and the fact that it was “reconfigured” only in the final quarter of 2000 to reflect the Company restructured in 2001, after the test year concluded;
- (2) The total lack of verification of the process and the fact that CBMS was unable to produce usable information for Commission Staff field auditors;
- (3) The admission that the system can operate arbitrarily;
- (4) The clearly demonstrated adverse effects on customer choice;
- (5) The risks associated with locking in decisions now that will flow through into the 2005 bundled services rate case; and
- (6) Disallowance of collection through delivery charges for these categories at this time merely means collection through the CTC, and Edison could revisit the question of “re-functionalization” of costs in the 2005 rate case.

The use of the CBMS is better addressed in the 2005 rate case, after Edison has presented several years of comparative information relating to the consistency and accuracy of CBMS.

b. A&G Expenses -- Direct Assignment and Allocation

Edison is alone in advocating its proposed use of the direct assignment methodology for allocation of A&G expenses. (*See* Edison Initial Brief at 64.) In fact, it appears that Edison must be reviewing a different evidentiary record than the one that exists in the instant proceeding for its bold assertion that there is “overwhelming and for all practical purposes uncontradicted evidence” in favor of the use of the direct assignment methodology. (*See id.* at 64.) **Every party** who addresses this issue agrees that use of the labor allocator is the proper methodology for the allocation of A&G expenses. (*See* Staff Initial Brief at 37-44; GC Initial Brief at 47-48; IIEC Initial Brief at 5-10, 11; ARES Coalition Initial Brief at 71.) The numerous reasons and arguments in support of the use of the labor allocator, including the fact the Commission utilized a labor allocator in the 1999 Edison DST proceeding, were fully addressed in Section II(c)(2) of both the instant Reply Brief and in the ARES Coalition’s Initial Brief.

The ARES Coalition respectfully requests that the Commission utilize a labor allocator for allocation of A&G expenses.

- c. **Proposed Known & Measurable Changes to Test Year Expenses**
 - i. **Expense adjustments Related to Rate Base Adjustments**
 - ii. **“Levelization” Adjustments**

A. Tree Management Expense

The record indicates that Edison’s proposed three-year average for tree management expenses for the years 1998-2000 is abnormally high. (*See* GC Initial Brief at 49; Staff Initial Brief at 46-49. Both Staff and GC proposed to normalize Edison’s proposed levelization adjustments based upon an analysis of expense information over a longer period of time. While both proposals are reasonable adjustments to Edison’s proposal, the GC six (6) year normalization adjustment should be adopted by the Commission. GC’s proposed normalization results in a \$4,703,000 reduction in Edison’s proposed tree trimming expense.

The ARES Coalition respectfully requests that the Commission utilize a six-year average to more properly levelize Edison’s proposed tree management expense.

B. Storm Restoration Costs

The record indicates that Edison’s proposed three-year average to normalize the storm restoration cost expense is abnormally high. (*See* GC Initial Brief at 49-50; Staff Initial Brief at 46-49.) The record also demonstrates that the Commission accepted use of a five-year period to normalize these expenses in the 1999 Edison DST proceeding. (*See* GC Initial Brief at 50; Staff Initial Brief at 46.) Staff and GC proposed separate levelization adjustments to Edison’s proposed storm restoration costs. (*See* GC Initial Brief at 50; Staff Initial Brief at 49.)

The ARES Coalition respectfully requests that the Commission, consistent with its Order in the 1999 Edison DST Proceeding, adopt GC’s proposal to utilize a five-year period to normalize the storm restoration cost expenses.

**C. Reserve for Levelized
Variable Storm Damage Expenses**

**D. Other –
FERC Accounts 580, 590, 592 - 94, and 903**

GC proposes a number of appropriate adjustments to FERC Accounts 580, 590, 592, 593, 594, and 903. (GC Initial Brief at 51-56.) For the reasons stated in GC’s Initial Brief, the ARES Coalition respectfully requests that the Commission adopt GC’s proposed adjustments to FERC Accounts 580, 590, 592, 593, 594, and 903.

- iii. Salary and Wage Adjustment for General Pay
Increases**
- iv. Adjustments for Post-Test Year “Merger Savings”**

As discussed in the ARES Coalition’s Initial Brief at page 73, Edison has asserted that it will not experience any savings as a result of its merger with Philadelphia Electric Company (“PECO”). As a result, Edison opposes all adjustments to account for post-test year merger savings. (*See* Edison Initial Brief at 71-73.) To account for post-test year merger savings, Staff and GC have proposed separate and appropriate adjustments to account for post-test year merger savings. Staff has proposed a \$8,096,000 adjustment related to payroll taxes. (*See* Staff Initial Brief at 59. *See also* Staff Ex. 3.0 at 7; Staff Ex. 17.0CR at 27.) GC has proposed a \$27,487,000 adjustment to account for payroll tax reductions and amortization of severance costs relating to layoffs. (*See* GC Initial Brief at 59.)

The ARES Coalition respectfully requests that the Commission require Edison to quantify the merger savings and adjust its test year expenses to reflect such savings. If Edison

had chosen to live with the mandated rate freeze as it advised the Commission, the public and its investors, the Company would be free under the Act to retain the savings from the benefit of its shareholders. Edison should not be allowed to have it both ways. In the absence of an allocation of the savings from Edison, the savings should be allocated on a percent of revenue by function basis.

- d. Other Proposed Adjustments to Expenses**
 - i. Exclusion of Incremental Expenses Related to Unicom/PECO Merger**
 - ii. Exclusion of Audit-Related Costs**
 - iii. Environmental Remediation Expenses**

As stated in the ARES Coalition's Initial Brief at page 74, unique and non-recurring expenses associated with the environmental remediation activities at Edison's manufactured gas plant ("MGP") should be removed from the test year expenses. Even if the Commission allows Edison to recover expenses related to MGP activities, the record indicates that Edison's proposal is more than **twice** as large as the amounts incurred in three out of the past four years (1996-1999). (*See* GC Initial Brief at 59.)

The Commission should see the insufficiency of Edison's conflicting testimony, recognize that Edison has not met its burden of proof, and excise the associated amounts from the revenue requirements as recommended by GC.

iv. Advertising Costs

Staff identified certain advertising costs that should be disallowed as not recoverable under Section 9-225 of the Act, not properly included in the test year, and those associated with an advertising campaign that was cancelled. (*See* Staff Initial Brief at 63. *See also* 220 ILCS 5/9-225.)

The ARES Coalition supports Staff's proposed \$893,000 reduction in Edison's proposed advertising costs.

v. Bank Commitment Fees

Staff proposed to eliminate certain bank commitment fees which is considered a form of interest payment, or "below the line item." (*See* Staff Initial Brief at 64.)

The ARES Coalition supports Staff's proposed \$902,000 reduction in Edison's proposed bank commitment fee costs.

vi. Legal Expenses

Staff proposed to eliminate certain legal expenses for failure to include only costs that are related to jurisdictional delivery services. (*See* Staff Initial Brief at 64.) As Staff explained, Staff's proposed adjustment was a problem of Edison's own making, since it refused to provide sufficient information for Staff's evaluation. (*See id.* at 65.)

The ARES Coalition supports Staff's proposed \$3,653,000 reduction in Edison's proposed legal expenses.

vii. Charitable Contributions & Memberships

Staff proposed to disallow certain charitable contributions to organizations outside Edison's service territory arguing that ratepayers should not bear the burden of expenses that provide them with no benefit. (*See id.* at 65.) Additionally, consistent with prior Commission practice, Staff recommended that the Commission disallow all of Edison's proposed dues other than those for the Edison Electric Institute. (*See id.* at 66.)

The ARES Coalition supports Staff's proposed \$1,801,000 reduction in Edison's proposed charitable contributions and memberships.

viii. Special Projects

As indicated in the ARES Coalition's Initial Brief at page 75, Edison included the costs of certain unique "special projects" within its proposed revenue requirements. However, no evidence was presented that certain of these "special projects," including, the Jefferson Substation refurbishment, the Summer 2000 Readiness Program, and the data conversion project, are recurring events for which Edison will continue to accrue expenses. When questioned on cross-examination, Edison witness Hill admitted his responsibility for choosing to include these costs in the proposed revenue requirements but was unable to say whether those expenses would recur. (*See* Tr. at 3454-57.)

Thus, it is not surprising in its Initial Brief, Edison makes no attempt to justify these one-time expenditures as proper for inclusion in the revenue requirement. Indeed, logic supports the conclusion that these are one-time events, and collection for those unique costs in subsequent years would allow Edison to over-collect in its rates. It is inherently improbable that the Jefferson Substation refurbishment, the Summer 2000 Readiness Program and the data conversion are anything other than one-time non-recurring expenses. Clearly, Edison has failed to meet its burden of proof.

The ARES Coalition respectfully requests that the Commission remove all expenses associated with "special projects" from the proposed revenue requirements.

ix. Research and Development Costs

This is another example of Edison's assertions being unsupported by evidence. Staff proposed a \$1,174,000 reduction because the information provided by Edison indicated that these costs were related to generation. (*See* Staff Initial Brief at 66-67.)

The ARES Coalition respectfully requests that the Commission remove all unsupported expenses associated with “special projects” from the proposed revenue requirements.

x. Interest On Customer Deposits

Staff proposed a \$919,000 reduction based upon a change in the annual interest rate and a calculation error of the Company. (*See* Staff Initial Brief at 67-68.)

The ARES Coalition supports Staff’s proposed adjustment to the interest on customer deposits.

xi. Uncollectibles Expense

Staff proposed a \$3,605,000 reduction in the uncollectible expense based use of a historical four-year average as a percent of delivery services revenues. (*See id.* at 68.) Staff’s proposed adjustment incorporates a more reasonable sample of data and represents a more normal uncollectible expense level than that offered by the Company.

The ARES Coalition supports Staff’s proposed adjustment to the uncollectible expense.

xii. Taxes Other Than Income Taxes

Staff proposed adjustments to remove amounts related to out-of-period state use tax and to account for payroll taxes. (*See id.* at 69-70.) GC proposes adjustments for the state use tax on purchases included in Edison’s cost of service study, O&M expenses, and real estate tax expenses. (*See* GC Initial Brief at 61.) All of these proposed adjustments are reasonable.

The ARES Coalition supports Staff’s proposed adjustment to the state use tax on purchases and to account for payroll taxes as well as GC’s proposed adjustment O&M expenses, and real estate tax expenses.

xiii. Incentive Compensation

GC proposes an adjustment to incentive compensation based upon a review of a five-year period (1996-2000) of Edison's historical evidence of incentive compensation. (*See id.* at 62.) GC witness Effron proposed a five-year normalization of this expense resulting in a \$7,517,000 reduction in Edison's proposed incentive compensation expenses charged to A&G expense. (*See id.*) The ARES Coalition supports GC's proposed adjustment. Additionally, as noted at page 13 and of the ARES Coalition's Initial Brief, Edison improperly has proposed to transfer \$39.5 in million incentive compensation expense into delivery services from accounts that were allocated to generation in the 1999 DST proceeding. As stated above, due to the lack of testing and verification of the CBMS, the Commission should reject Edison's proposed re-functionalization of \$39.5 million in incentive compensation expenses.

xiv. Rate Case Expenses

Staff proposes a \$1,106,000 reduction in Edison's proposed expenditures for outside collection agencies incurred in the test year for delivery services. (*See Staff Initial Brief* at 71.) Staff properly notes that delivery services customers should not be required to bear the total cost of this expenditure as a portion of this expenditure is related to generation.

The ARES Coalition supports Staff's proposed adjustment for expenditures for outside collection agencies.

- 4. Prudence of Expenses**
- 5. Other Revenue & Expense Issues**

E. COST OF CAPITAL

The ARES Coalition understands that Staff, GC and Edison agreed upon cost of capital issues. Specifically, those parties agreed that Edison's capital structure for use in this proceeding should be set at approximately 57% debt and 43% common equity. (*See Staff*

Initial Brief at 72.) Those parties also agreed on a number of other issues, including the retirement of transitional funding instruments; adjustments to the purchase method of accounting related to the merger. (*See* Staff Initial Brief at 73.) Those parties also agreed to a 6.95% cost of long-term debt; an 11.72% cost of common equity; and a weighted average cost of capital of 8.99%. (*See* Staff Initial Brief at 75, 82, 85.) While not taking any position with regard to the particular adjustments or the underlying methodologies, the ARES Coalition is generally supportive of the settlement.

However, the ARES Coalition agrees with Staff and GC that it is important for the Commission to make clear in its Order that **all** of the risks associated with the operation of the generation system are irrelevant to the Commission determining the cost of capital in Edison's delivery services rates. (*See* Staff Initial Brief at 5; GC Initial Brief at 15-19.) By definition, the costs associated with Edison operating its delivery services system **exclude** generation-related costs. (*See* 220 ILCS 5/16-102.) Any risks associated with "provider of last resort" ("POLR") exist solely as a result of voluntary actions undertaken by Edison. (*See* Staff Initial Brief at 5; GC Initial Brief at 16-17.) Moreover, the Commission also should take note of Edison's apparent willingness to present positions that directly contradict positions that it took in prior Commission proceedings. As both Staff and GC note, Edison provided sworn testimony in prior proceedings pledging that its transfer of its generation assets would reduce Edison's operating risks. (*See* Staff Initial Brief at 5; GC Initial Brief at 17-18.) When evaluating bare assertions by Edison witness, on other issues in the instant proceeding and in future proceedings, the Commission should take into account Edison willingness to let its version of "facts" be guided by expediency.

The ARES Coalition respectfully requests that the Commission enter an Order in the instant proceeding regarding capital structure that: (1) accepts the settlement reached by Staff, GC and Edison; (2) emphasizes that the cost of equity approved in the instant proceeding relates exclusively to the Company's delivery business, and (3) articulates the Commission's skepticism about efforts to include supply risk premiums in the delivery services cost of capital.

- 1. Capital Structure**
 - a. Known And Measurable Changes to Test Year Capital Structure**
 - i. TFI Retirements in 2001 and 2002**
 - ii. Other**
 - b. Purchase Accounting Adjustments**
 - c. Note Receivable from Exelon**
- 2. Cost of Debt**
 - a. Purchase Accounting Adjustments**
 - b. Cost of Variable Rate Long-Term Debt**
- 3. Cost of Common Equity**
 - a. Comparable Groups**
 - b. Methodological Issues**
 - c. Market Versus Book Issues**
- 4. Overall Rate of Return**

F. COST OF SERVICE AND RATE DESIGN

1. Cost of Service Study Issues

Staff and GC agree with the ARES Coalition that Edison has failed to demonstrate that the Commission should allow it to alter the fundamental underlying basis for calculating its delivery services rates. (*See* ARES Coalition Initial Brief at 80-81; Staff Initial Brief at 86; GC Initial Brief at 63-64.) Edison has presented nothing in the instant proceeding to cause the Commission to rethink the unambiguous conclusion it reached in the 1999 Edison DST Proceedin. (*See* Order, 1999 Edison DST Proceeding at 57.) Furthermore, for the Commission to reverse course half way through the mandatory transition period would result in widespread uncertainty in the retail electric marketplace. (*See* ARES Coalition Initial Brief at 80-81.)

Consistent with the Commission's legislative mandate to promote competition, and its policy of encouraging rate continuity, the ARES Coalition respectfully requests that the Commission reject Edison's request to change the underlying method for calculating its DST rates from an embedded cost methodology to a marginal cost methodology.

a. Marginal Cost Study

In addition to noting the adverse customer impacts, both Staff and GC appropriately highlight the theoretical flaws as well as the mechanical flaws contained in Edison's marginal cost of service study. (*See* Staff Initial Brief at 86-94; GC Initial Brief at 64-70.)

b. Embedded Cost Study

The evidence in the record clearly demonstrates that the embedded cost methodology to be more appropriate than a marginal cost methodology. (*See* Staff Initial Brief at 86, 94; GC Initial Brief at 70.) However, Edison's proposed embedded cost study is not without its flaws. Both Staff and GC propose a number of reasonable adjustments to and recommendations regarding Edison's embedded cost of service study. (*See* Staff Initial Brief at 94-95; GC Initial Brief at 70- 80.) The Commission should direct Edison to work with Staff, GC and other interested parties gather additional information necessary for a coherent presentation of complete marginal and embedded cost of service studies in Edison's 2005 rate case.

The ARES Coalition respectfully requests that the Commission enter an order rejecting Edison's proposed marginal cost of service methodology and adopting the embedded cost methodology to calculate Edison's DST rates, consistent with the recommendations of Staff and GC.

2. Interclass Revenue Allocation

G. RATE DESIGN

1. RCDS Rate Design

a. Demand Ratchet

i. General Service Ratchet

Virtually all parties (with the exception of the 2 DOE facilities) are in agreement that Edison's proposed twelve-month demand ratchet should be **rejected** in its entirety, as it was in Edison's 1999 DST proceeding. (*See* ARES Coalition Initial Brief at 81; Staff Initial Brief at 96, 99; GC Initial Brief at 81; TrizecHahn Initial Brief at 15; BOMA Initial Brief at 10-11.) Edison has failed to demonstrate that its proposed annual demand ratchet is necessary or appropriate for cost recovery.

In fact, the record indicates that Edison's proposal is unfair to customers, inconsistent with principles of cost causation, and inconsistent with Edison's actual distribution investment practices. (*See* GC Initial Brief at 81; ARES Coalition Initial Brief at 83-84.) Edison has failed to introduce any new evidence that provides the Commission with any reason to revisit this issue and has failed to overcome any of the objections raised in the 1999 Edison DST Proceeding. (*See* ARES Coalition Initial Brief at 81-82; GC Initial Brief at 82-83; Staff Initial Brief at 99; TrizecHahn Initial Brief at 15.) As the Staff aptly noted, in the 1999 DST proceeding, the Commission indicated that demand ratchets had not been favorably received for more than fifteen years. (*See* Staff Initial Brief at 98-99. *See also* Order, 1999 Edison DST proceeding at 64.) Indeed, Edison has failed to prove that it is appropriate to adopt the proposed annual demand ratchet at this time instead of at the end of the transition period.

The Commission should consider this issue in the 2005 rate case in tandem with any similar bundled rate design issues so as to assure greater comparability between bundled and delivery services. As a matter of simplicity and to reduce the enormous level of uncertainty in

the marketplace among customers taking competitive service and those considering choice, the ARES Coalition respectfully requests that the Commission reject Edison's annual demand ratchet proposal.

ii. Special Ratchet for Standby Customers

b. Definition Of Billing Demand In Rate RCDS

Edison only presents a one-sentence assertion in support of its proposed definition of billing demand in Rate RCDS. (*See* Edison Initial Brief at 111.) As explained by the ARES Coalition at page 84 of its Initial Brief, Edison uses the highest 30-minute actual demand which occurs during the on-peak period as the definition of a customer's billing demand. However, this does not adequately account for the fact that many customers do not peak at the same time that Edison's system control area peaks. (*See* ARES Coalition Initial Brief at 84.) Edison should be required to use the same billing demand definition in its delivery services tariffs that it uses for its bundled service tariffs, which for Rate 6 customers is the same, but for Rate 6L customers is the average of three highest 30-minute demands. Such a revision is consistent with comparability and cost causation principles.

Edison did not dispute the fact that the "diversity" of Edison's customer portfolio ensures that customer's peak demand rarely occurs in the same 30-minute window that the Edison's system control area peaks. (*See* Edison Coalition Initial Brief at 111.) Thus, billing demands that rely on non-coincident peak demand overstate the necessary distribution capacity and thus fixed costs. Nor did Edison respond to the argument that Edison's proposed billing demand determination places too much weight on historical months. (*See id.*) The ARES Coalition recommends that adoption of the billing demand definition that is used for bundled service rates -- the average of three highest 30-minute demands -- would temper this problem,

create more consistency in rates, and should be adopted in place of the current RCDS definition of billing demand. (*See* ARES Coalition Initial Brief at 85.) Moreover, there is no reasonable basis for the inconsistent definitions of billing demand between Edison’s bundled service and delivery services tariffs.

The ARES Coalition respectfully requests that the Commission require Edison to use the same billing demand definition in its delivery services tariffs that it uses in its bundled service tariffs.

c. Impact on CTCs

As explained fully *supra* in the Executive Summary and Section I(C)(3), and in the ARES Coalition Initial Brief at pages 42 to 53 and 87 to 90, Edison has misled the Commission regarding the impact that its proposed delivery services rate increase would have upon customers, asserting that the combined effect of its proposed distribution and transmission rate increases would be offset by decreasing CTCs. Edison’s repeated claims that its proposed \$752 million increase in transmission and distribution charges would be offset by reductions in the CTCs are simply untrue, and unsupported by any customer impact analysis. The ARES Coalition’s analyses demonstrate that in most cases, CTCs would be wiped out or and driven into “negative” territory, resulting in a zero CTC, and thereby penalizing customers for exercising choice.

The ARES Coalition respectfully requests that the Commission reject Edison’s proposal to shift costs from recovery through the CTC to delivery services charges, and requests that these charges remain part of the CTC.

d. Generation Facilities Under Rate RCDS
i. Proposals for Production Credit
ii. Proposals for Production Adder

2. Rate HVDS

Edison has proposed a single voltage-based tariff, to give a discount to delivery services customers who take service at voltage levels of 69 kV or greater. A number of parties highlight the dramatic rate shock and impact of adoption of Edison's proposed Rider High Voltage Delivery Service ("HVDS"). (*See* TrizecHahn Initial Brief at 2-6, 18-24; BOMA Initial Brief at 14-18.)

One of the primary reasons for the dramatic rate shock for the over 10 MW customer class is the massive credit of \$2.27/kW on unratcheted distribution facilities charges for the small number of Edison's high voltage customers that are served by Edison at 69kV or higher. (*See* TrizecHahn Initial Brief at 3.) This massive proposed credit has the effect of dramatically **increasing** the distribution facilities charges for over 10 MW customers served at less than 69 kV because under Edison's proposed rate design these customers offset the huge revenues lost by Edison as a result of the massive proposed credit for high voltage customers in this class. (*See id.* at 3. *See also* Tr. at 1087-88; ComEd Exhibit 50.0, Attachment C at 3.)

The record demonstrates that the rate design of Rider HVDS is highly discriminatory against over 10 MW customers who are ineligible for the credit. (*See* TrizecHahn Initial Brief at 18.) These over 10 MW customers are forced to shoulder the burden of the "revenues lost" to Edison as a result of the massive HVDS credit. This results in a **82% increase** in unratcheted distribution facilities charges from \$1.92/kW to \$3.50/kW for the over 10 MW customers. (*See id.* at 19.) On the other hand, these customers are not required to offset a large high voltage credit under Edison's proposal if they remain on bundled service with Edison. On

its face, Edison's approach would violate Section 16-108(c), which requires that delivery services be priced on a nondiscriminatory basis regardless of whether the customer chooses the electric utility or an ARES. (*See* 220 ILCS 5/16-108(c).) Again, this proposal appears to be consistent with Edison's approach in the instant proceeding to propose rate design changes that would have a negative impact upon customers that have exercised choice and to stymie areas in which competition has begun to develop.

The Commission should reject the Rider HVDS proposal and direct Edison to prepare a full set of rates based upon voltage levels that would apply across all customer classes as required in the Customer Choice Act.

a. Eligibility

A central criticism of the Edison proposal has not been that Edison has proposed a voltage related rate but that it has **not** proposed a reasonably **complete** set of rates based upon voltage levels, thus rendering its proposal an unfair half-measure. (*See* ARES Coalition Initial Brief at 92; IIEC Initial Brief at 23-24; TrizecHahn Initial Brief at 19-20; BOMA Initial Brief at 14.) Establishing a single voltage-based rate is arbitrary and not in accord with the requirements of the Act. (*See* 220 ILCS 5/16-108(d), -108(c).)

The ARES Coalition respectfully requests that the Commission reject the proposed Rider HVDS and direct Edison to prepare a current analysis of its customers, based on voltage levels and the associated cost to serve, which analysis should be included in the 2005 rate case.

b. Calculation of Credit

In addition to agreeing that Edison's half-measure would result in rate shock for non-qualifying customers, BOMA has provided evidence that Edison's proposed credit is improperly designed and is flawed in its calculations. (*See* BOMA Initial Brief at 16.)

As discussed above, the ARES Coalition respectfully requests that the Commission reject Edison's proposed discounts to hand-picked high voltage customers in its entirety and direct Edison to prepare a comprehensive cost of service study of its customers based upon voltage levels. However, if the Commission deems an HVDS credit appropriate, it should utilize the proper calculations, as described by BOMA, to quantify the credit.

c. Allocation of Costs to Other Classes

As discussed at pages 46 to 53 of the ARES Coalition's Initial Brief, the customer impact studies presented by the ARES Coalition demonstrate that approval of Rider HVDS (and the corresponding shifting of costs to customers taking service below 69 kV), has an **adverse impact** on most customers currently exercising choice as well as those who may wish to consider doing so. These adverse impacts were also substantiated by some of Edison's customers. (*See* BOMA Initial Brief at 14-16; TrizecHahn Initial Brief at 2-3, 18-23.) However, true to form, Edison wishes to penalize those customers that have exercised customer choice. The Commission should reject Edison's proposal to drastically shift the costs among non-residential customers.

The ARES Coalition respectfully requests that the Commission deny Edison's request to approve Rider HVDS and direct Edison to develop a full and fair set of voltage-based rates that accurately reflect the cost of service, and to present that analysis in its 2005 rate case.

d. Exemption From Rate RCDS Facility Charges

e. Adoption Prior to Bundled Rate Tariff Change

A number of parties have proposed solutions to soften the blow of Edison's proposed rate increase that other large delivery services customers would experience as a result of the cost shifting associated with Rider HVDS. (*See* ARES Coalition Initial Brief at 96-97; IIEC

Initial Brief at 23; TrizecHahn Initial Brief at 24; BOMA Initial Brief at 17.) However, Edison, true to form, is not concerned about either the negative impact upon those customers that have exercised choice or the significant negative impact upon the competitive market. Edison's proposed outcome would negate much of the work and investment that the Commission customers, and ARES have made toward establishing a competitive retail electric market in Illinois. Addressing the applicability of voltage-based rates to bundled service customers as well as to delivery services customers in the 2005 rate case would be an appropriate compromise, and would be consistent with Edison's desire to "get the price right."

The ARES Coalition respectfully requests that the Commission reject this attempt at voltage-based rates until the 2005 rate case when all bundled rates will be considered.

3. Rider ISS -- Interim Supply Service

While Edison is correct that there is no requirement in the Act that it offer Rider ISS, having offered this service as a tariffed service, the Commission enjoys all of its powers and authority under the Act to order proposed changes, modifications, and revisions to this tariff. There is no provision in the Act that limits the Commission's ability to revise Rider ISS. Indeed, central to the Commission authority to ensure just and reasonable rates is its ability to direct changes to the pricing structure contained in Rider ISS.

a. Pricing

In its Initial Brief, Edison fails to even mention its prior assertions regarding the basis for the proposed penalty structure in Rider ISS -- that some customers and/or suppliers have engaged in "gaming" of the system through the use of Rider ISS. (*Compare* Edison Initial Brief at 121-22 *with* ComEd Ex. 1.0 at 14 and ComEd Ex. 12.0 at 25-26.) Curiously, Edison has declined to publicly indicate which RES or ARES were more heavily involved in the

switching of customers to the ISS tariff and which RES or ARES then switched customers back to physical delivery or to the PPO. (*See* ARES Coalition Initial Brief at 98.) Additionally, Edison has refused to bring any direct evidence of this alleged abuse to the attention of Staff and the Commission. (*See id.* at 98.)

The record indicates that Edison has failed to justify its proposed imposition of inclusion of a penalty or premium of 10% over the PPO price in the pricing structure under Rider ISS. The Commission should reject Edison's proposal and instead direct Edison to implement the alternative "phase-in" solution that was proposed by the ARES Coalition. (*See* ARES Coalition Initial Brief at 99-101.)

The ARES Coalition proposed a "phase-in" of the penalty provisions in Rider ISS. (*See id.* at 99.) Under this solution, customers would receive service under Rider ISS for one month at the PPO prices. During the second month the rate would be PPO plus a five-percent premium, and the third month would be a ten-percent premium to the PPO. (*See id.*) Unlike Edison's proposal, this alternative Rider ISS pricing structure does not penalize the customers for a supplier's departure or for the intricacies of billing cycle timing in the first month of service on Rider ISS, but it still provides an increasing incentive for customers to make a choice rather than game the system. This is a reasonable, straightforward and easy to implement solution to revise Edison's proposal. Edison has failed to present any support for its assertions that it would be too onerous to implement a billing system that had an escalating penalty factor.

The ARES Coalition respectfully requests that the Commission immediately approve a modified version of Edison's proposed Rider ISS, with no penalty in the first month, a 5% penalty in the second month, and a 10% penalty in third month. The ARES Coalition further

respectfully requests that the Commission direct Edison to provide to the Commission, on a confidential basis, a report detailing the utilization of Rider ISS during the years 2000 and 2001 and to use that data to calculate the amount by which Edison's proposed revenue requirements should be reduced.

b. Commission Authority to Alter Edison's Proposal

The Commission should completely disregard Edison's bold assertion that the Commission lacks authority to alter Edison's proposed Rider ISS. (*See* Edison Initial Brief at 122.) Since Edison has filed Rider ISS with the Commission, the Commission retains all of its powers under the Act to review the tariff and propose modifications to the tariff. In its Initial Brief, Edison mainly relies upon the "legal assertions" of Edison's non-lawyer witnesses. Accordingly, Edison's assertions should be afforded no weight.

The only legal argument offered by Edison is a citation to Section 16-103(e) of the Act. (*See id.*) However, Section 16-103(e) of the Act provides that the Commission shall not require an electric utility to offer any tariffed service other than those services enumerated in Section 16-103 of the Act. (*See* 220 ILCS 5/16-103.) Section 16-103(e) of the Act does **not** limit the ability or authority of the Commission to modify proposed tariffs. (*See* 220 ILCS 5/9-201(b); -16-108(a).)

Additionally, IIEC correctly notes that Edison cannot unilaterally abandon Rider ISS service. (*See* IIEC Initial Brief at 35.) Rider ISS is an already approved tariff. As an approved tariff, Section 8-505 of the Act requires Edison to seek Commission approval prior to abandoning Rider ISS. (*See* 220 ILCS 5/8-505.)

The ARES Coalition respectfully requests that the Commission order the modifications outlined by the ARES Coalition that are necessary to ensure that Rider ISS is just and reasonable.

4. Other Customer Class Definition Issues

5. Residential Customer Eligibility for Rider PPO

6. SBO Credit

Edison makes no excuses for its request that the Commission again revisit the issue of the appropriate methodology for calculation of the single bill option (“SBO”) credit. As discussed in the ARES Coalition’s Initial Brief at pages 15, 27-29, and 102, Edison’s attempt to re-litigate the issue relating to the appropriate methodology for calculation of the SBO credit is contrary to Illinois law. Additionally, resetting the SBO credit as requested by Edison would violate all notions of rate continuity and would result in rate shock.

Further, Staff has properly provided the Commission with three (3) independent reasons why it should reject Edison’s repeated “avoided cost” argument. **First**, it unfairly benefits the Company at the expense of competitors and consumers and would effectively undermine delivery services unbundling. (*See* Staff Initial Brief at 105-107.) **Second**, the avoided cost methodology flies in the face of Commission precedent. (*See id.* at 107.) **Third**, the avoided cost methodology would tilt the playing field so far in the utility's favor that there would be no reason for competitors to remain in the market. (*See id.* at 106-07.)

No legitimate reason has been provided for the Commission to recalculate the SBO credit, and many legitimate reasons have gone essentially un rebutted as to why the Commission shall leave the credit as it has been set. Nevertheless, if the Commission decides to modify the SBO credit in the instant proceeding, Staff’s proposed SBO credit should be adopted. Staff’s

proposed SBO credit relies upon Edison's own embedded cost analysis which results in a \$.60 credit. (*See id.* at 109.) Additionally, Staff proposes two offsets to its proposed SBO credit based upon the nature of Electronic Data Interchange (EDI) transactions between Edison and the SBO provider. First, if the transactions take place over the Value Added Network (VAN), Staff accepts Edison's \$.27/month offset, which results in a net \$.33/month SBO credit. (*See id.*) Second, if the transactions take place over Edison's Internet site, Staff recommends an offset of \$.03/month, producing a net \$.57/month SBO credit. (*See id.*) A similar offset recently was adopted by the Commission in the Ameren DST proceeding – ICC Docket No. 00-0802.

As discussed above, the ARES Coalition makes the same recommendation here that was made with respect to the other rate design issues discussed above -- the Commission should reject this proposal because it violates the principles of rate continuity and rate shock. The ARES Coalition respectfully requests that the Commission retain the current SBO credits and reject Edison's plan to virtually eliminate SBO credits.

7. Metering Service Charge Credit

Similar to its position regarding the SBO credit, Edison makes no excuses for its request that the Commission again revisit the issue of the appropriate methodology for calculation of the meter service provider ("MSP") credit. As discussed in the ARES Coalition's Initial Brief at pages 15, 27-29, and 102, Edison's attempt to re-litigate the issue relating to the appropriate methodology for calculation of the MSP credit is contrary to Illinois law. Additionally, resetting the MSP credit would violate all notions of rate continuity and, based upon Edison's proposal, would result in rate shock.

Again, Staff has properly provided the Commission with three (3) independent reasons why it should reject Edison's repeated avoided cost argument. **First**, it unfairly benefits the Company at the expense of competitors and consumers and would effectively undermine delivery services unbundling. (*See* Staff Initial Brief at 111.) **Second**, the avoided cost methodology flies in the face of Commission precedent. (*See id.* at 107.) **Third**, the avoided cost methodology would tilt the playing field so far in the utility's favor that there would be no reason for competitors to remain in the market. (*See id.* at 106-07.)

Staff agrees with the ARES Coalition that Edison's proposed revisions to its standard metering charges and the associated MSP credit amount to a "bait and switch" that would have a devastating anti-competitive impact upon the development of competition in metering services. (*See* ARES Coalition Initial Brief at 103; Staff Initial Brief at 111.) It appears that Edison is yet again trying to change the rules of the game at the expense of customers who select competitive metering options. The record evidence demonstrates that Edison's proposed MSP credits result in a **99.4% to 96.6% reduction** for some classes of customers. (*See* ARES Coalition Initial Brief at 104.)

Based upon the evidence in the record, Edison has failed to meet its burden of proof; it has not demonstrated that its proposed MSP credit is just and reasonable. Additionally, Edison has failed to provide any clear information regarding the obvious savings reductions that would result from its proposal. (*See id.* at 105.) Instead of promoting customer choice, Edison's proposed revision to its standard metering charge would amount to a barrier to competition. (*See id.* at 106.) Again, by lessening the current credits associated with taking service from an MSP, this proposal appears to be consistent with Edison's approach in this proceeding to propose changes that would have a negative impact upon the competitive market.

The ARES Coalition makes the same recommendation here that was made with respect to the other rate design issues discussed above -- the Commission should reject this anti-competitive proposal.

The ARES Coalition respectfully requests that the Commission retain the current MSP credits and reject Edison's plan to virtually eliminate MSP credits in the instant proceeding.

8. **Rider TS - Transmission Service**

9. **24 Month Return To Bundled Service Requirements**

10. **Rider 25**

As discussed in the ARES Coalition's Initial Brief at page 107, AES NewEnergy's customer impact analysis demonstrates that Edison's proposed rate increase will have a significant impact upon Rider 25 - Space Heat customers. Specifically, the record demonstrates that **all** the Rider 25 customer accounts analyzed would receive **reduced savings** as a result of the proposed increase in delivery services rates due to the inability of CTCs to absorb the full brunt of those increases. (*See* ARES Coalition Initial Brief at 107.)

Rider 25 customers do not pay a demand charge for energy flowing through designated Rider 25 meters during non-summer months under bundled service. (*See* BOMA Initial Brief at 19.) However, Rider 25 buildings must pay a demand charge under Rate RCDS, and this situation most often inhibits Rider 25 customers from economically participating in electric open-access. (*See id.* at 19. *See also* ARES Ex. 1.0 at 18.) This huge disparity in the rate design is illegally discriminatory, hinders competition and severely restricts the Rider 25 customers from exercising competitive power supply alternatives. (*See* BOMA Initial Brief at 19. *See also* 220 ILCS 5/16-108(c).)

The history of the disparate treatment of Rider 25 accounts has been well-documented in the record. (*See* ARES Coalition Initial Brief at 107-08; BOMA Initial Brief at 19.) The record demonstrates that Rider 25 has been the key barrier to open access over the past two years for Chicago Loop Office buildings. (*See* ARES Coalition Initial Brief at 108.) The Commission should not allow Edison to increase delivery services rates in a manner that will exacerbate already adverse open access conditions for Rider 25 customers.

To resolve this issue, BOMA appropriately recommended that the RCDS rate design mirror the rate design under the bundled rate, including the Rider 25 demand “forgiveness” during non-summer months, until such time as the bundled rates are redesigned. (*See* BOMA Initial Brief at 19-20.)

The ARES Coalition respectfully requests that the Commission prohibit Edison from imposing additional impediments upon Rider 25 customers. In addition to rejecting the proposed rate increase for these customers, the Commission should direct Edison to assist ARES in simplifying the analytical tasks required to assess and price the delivery services rates for Rider 25 customers. At a minimum, Edison should be required to make two pieces of billing information available on its PowerPath website or via other means. First, Edison should be required to separate these customers’ monthly space heat energy (kWh) consumption information from their non-space heat energy (kWh) consumption by month. Second, Edison should be required to provide to these customers and ARES the additional billing demand (kW) from the space heat meters that the customer would have been charged if the customer were taking service under Rate RCDS. This is the type of information that has been requested by BOMA. (*See* BOMA Initial Brief at 20.) Only by Edison providing this information can these

customers make an accurate “apples-to-apples” comparison in deciding whether to take delivery services.

11. Other Topics

III. TERMS AND CONDITIONS ISSUES

**A. SBO CREDIT ELIGIBILITY
(CUSTOMERS WITH PAST DUE BUNDLED SERVICE BALANCES)**

The Commission should direct Edison to retain the current SBO rate design and reject yet again Edison’s proposals designed to undermine the development of competition in providing billing services. MidAmerican agrees with the ARES Coalition’s assessment that Edison’s proposal would be inconsistent with the Commission’s Order in the uniformity proceeding. (*See* MidAmerican Initial Brief at 3-4; ARES Coalition Initial Brief at 109-110.) Since the Commission properly directed Edison to collect its own past due balances associated with services the utility provided prior to the RES having any relationship with the customer, Edison now proposes to limit eligibility for single billing service. In its Initial Brief, Edison failed to present any evidence that would justify this proposed revision to its SBO tariff. (*See* Edison Initial Brief at 138-39.)

The ARES Coalition respectfully requests that the Commission reject Edison’s proposed revision to the eligibility section of Rider SBO.

B. ENROLLMENT ISSUES

The ARES Coalition agrees with Staff, Nicor Energy L.L.C. (“NewEnergy”), MidAmerican, and NEM that customers should be allowed to switch providers over the Internet by executing a letter of agency through use of an electronic signature. (*See* Staff Initial Brief at 116; Nicor Energy Initial Brief at 3-4; MidAmerican Initial Brief at 1-3; NEM Initial Brief at 11-13.) The record demonstrates that electronic signatures are utilized successfully in the retail

natural gas industry in Illinois and should be allowed in the retail electric market. (*See* Staff Initial Brief at 116-17.)

While Edison opposed the use of electronic signature in its testimony, Edison is silent on this issue in its Initial Brief. (*See* ComEd Ex. 31.0 at 51-54.) In its Initial Brief, Staff properly reviewed the applicable law and provides an appropriate analysis in support of the use of electronic signatures.

The ARES Coalition respectfully requests that the Commission enter an Order directing Edison to allow the use of electronic signatures as a means of enrolling customers to switch to alternative providers.

C. RELEASE AND USE OF CUSTOMER SPECIFIC INFORMATION

D. OFF-CYCLE OR NON-STANDARD SWITCHING FOR RESIDENTIAL CUSTOMERS

Staff proposed that Edison extend the option of off-cycle or non-standard switching to residential customers. (*See* Staff Initial Brief at 123.) The ARES Coalition supports Edison's decision to offer off-cycle or non-standard switching to residential residential customers. (*See* Edison Initial Brief at 140.) However, Edison improperly limited this option to customers on Rider ISS. (*See id.* at 140. *See also* Staff Initial Brief at 123.) While it is reasonable for Edison to impose a charge for this service, Edison provided no valid rationale why this service should not be offered to residential customers for their initial switch to competitive service. (*See* Edison Initial Brief at 140.)

The ARES Coalition respectfully requests that the Commission direct Edison to submit a tariff revision, to be effective later than January 1, 2003, to allow all residential customers to elect off-cycle or non-standard switching at any time.

E. GENERAL ACCOUNT AGENCY ISSUES

Contrary to Edison's assertions at page 141 of its Initial Brief, its proposed requirement for customers that have an agency relationship to submit a form before being allowed to enter into such a relationship would add an unnecessary level of bureaucracy for non-residential customers that work with agents. (*See* ARES Initial Brief at 110.) There is no need for the Commission to add impediments to competition. If anything, the Commission should find ways to **reduce** bureaucracy and red tape. Edison has not demonstrated that there is any need for this form to be applied to non-residential customers. To the contrary, the record demonstrates it is unnecessary.

The record clearly demonstrates that there are numerous existing safeguards and provisions available to customers, the utilities, and the Commission; and that there have been **no problems** to date with the approximately **8,000 non-residential delivery services customers** and **sixteen (16) different agents** that currently have their electric bills sent to agents. (*See* ARES Coalition Initial Brief at 111. *See also* Tr. at 1113.) Thus, there is no need to change the current requirements for non-residential customers with respect to agency documentation.

Alternatively, if the Commission decides to allow Edison to require the use of a general account agency form, Edison has agreed to revise the form to clarify that an agent would be allowed to terminate its relationship with the customer. (*See* ARES Coalition Initial Brief at 112. *See also* Tr. at 1115-16.)

The ARES Coalition respectfully requests that the Commission reject Edison's proposal to require the use of the proposed general account agent form.

F. VALUE-ADDED AGGREGATION SERVICES

G. COLLECTION OF FERC CHARGES UNDER DSTs

In the instant proceeding, Edison seeks to impose liability upon residential customers for any wholesale obligations of its ARES. (*See* Edison Initial Brief at 130.) The ARES Coalition agrees with GC that essentially, Edison is seeking to turn a FERC tariff liability of the ARES into a retail liability of the residential customer. (*See* GC Initial Brief at 99.) As stated in the ARES Coalition's Initial Brief at page 112, this is the most egregious example of Edison's pervasive efforts to have both the ARES and retail customers subject to exposure for as much as possible. The ARES Coalition agrees with GC that there is no need for the Commission to be in the business of imposing duplicative liability for FERC-jurisdictional tariff terms upon residential customers. (*See* GC Initial Brief at 98–99.)

The ARES Coalition respectfully requests that the Commission reject Edison's attempts to impose liability upon customers for any wholesale obligations of its ARES.

IV. OTHER ISSUES

**THE COMMISSION SHOULD DISREGARD
EDISON'S "LOST REVENUE" ANALYSIS A/K/A "THE THING"**

GC goes into considerable detail to explicate for the Commission Edison's sleight of hand regarding its claim that the Company and its shareholders already have borne a considerable uncompensated burden resulting from the imprudent and neglectful mismanagement of the distribution system. (*See* GC Initial Brief at 43-46.) The ARES Coalition whole-heartedly endorses GC's comments on this matter, and takes the opportunity here to draw the Commission's attention to the record on this matter. Of all of the outrageous aspects of Edison's behavior in and leading up to the instant proceeding, the Company's treatment of this so-called "lost revenue" or "shareholder burden" issue really takes the cake.

At the outset of the instant proceeding and in subsequent pre-filed testimony, the Company's witnesses asserted that in preparing its revenue requirements the Company had excised any excess costs that were the result of past failures. (*See, e.g.*, ComEd Exs. 1.0 at 19, 18.0 at 6.) As the case progressed and discovery began to reveal that the Company had done no such thing, the Company began to panic and sought some sort of fig leaf. (*See* GC Cross Ex. 64.) That fig leaf was produced by the Company was an "analysis" ordered up by Edison's lead-off cross examination witness Chairman Strobel the day before her appearance. (*See* GC Initial Brief at 43-44.)

This "analysis" was ultimately produced in dribs and drabs by the Company in the following days based upon the cross-examination of Chairman Strobel by the ARES Coalition. Both the asserted "analysis" of lost revenue and the several pages of numbers finally produced by the Company as an alleged basis for the "analysis" were so paltry and nearly indecipherable that:

- ?? The ALJs took to calling the "analysis" "The Thing" because it was so far from being either a complete response to the data request or a complete analysis that could form the basis for the Company's assertions;
- ?? The statements by counsel for Edison filled several pages of the hearing transcript detailing for all of the parties and the ALJ what "The Thing" was NOT; and
- ?? Edison witness Juracek, detailed by the Company to explain "The Thing" could not relate "The Thing" to the case at hand.

While the Company did its best in the hearing to downplay the meaning or significance of "The Thing", the Company now seeks in its Initial Brief to raise "The Thing" to the level of proof of shareholder burden while still calling just a "rough estimate." (Edison Initial Brief at

30). As GC so aptly pointed out “The Thing” was nothing more than a “*post hoc* rationalization for an otherwise unsupported allegation.” (GC Initial Brief at 44)

Even if the Company had provided a proper non-rough analysis and in a timely, straightforward fashion, the underlying contention of unfair shareholder burden and absorption of distribution system restoration costs would still be ill-founded and fallacious. The facts can be simply summarized:

?? The phenomenon that the Company now wishes to characterize as “lost revenue” is actually a fundamental element of prospective rate making referred to as “regulatory lag.” Because ratemaking is not instantaneous, and oftentimes there are years between rate cases, a utility’s rates never perfectly match its profits and losses. The Company’s effort in the instant proceeding is to build in to prospective rates a reflection of costs incurred in a prior year that was, according to all concerned an period of extraordinary activity to restore the system to a reliable condition.

?? Edison’s financial performance during the period utilized by Edison in “The Thing” was excellent by any measure. In fact, in 1999 Edison had to petition the General Assembly to raise the earnings cap because its shareholders were enjoying the benefits of the Customer Choice Act. Without question, if the Company were to present a full analysis, it would reveal “found profits” instead of “lost revenues.”

?? Edison had repeatedly promised the public and the Commission that it would not seek to recover excess costs due to past failures but has now failed to excise even one thin dime of calendar year 2000 expenses attributable to past failures – other than the \$2 million for the studies that documented those past failures.

Again, by its own hand, Edison has made the case for an independent, *credible* review of its system investments and expenses, since Edison itself cannot be relied upon in this regard.

V. CONCLUSION

Edison has placed the Commission, Staff, Intervenors, delivery services customers and bundled service customers in an extraordinarily difficult position in the instant proceeding. Edison has presented a proposed rate increase that is artificially inflated, that would damage the development of competition and that would set the stage for a massive increase in its bundled service rates at the end of the mandatory transition period. Edison has withheld information and sought to hamper the ability of parties to ascertain the reasonableness of Edison's proposal. In so doing, however, Edison has placed itself in an impossible position, losing credibility and trust as a result. Through its behavior leading up to and during the instant proceeding, Edison has invited the Commission to take the essential step of undertaking an investigation and audit or other in-depth review of Edison's distribution investment and expenses. Only the Commission can prevent Edison from succeeding in effort that is grossly unfair to all others involved. As the Commission commences its deliberations regarding the instant proceeding, the Commission should keep the following in mind:

- ?? Edison promised both the public and the Commission that it would bear the costs of reliability restoration itself and not attempt to shift those costs to customers **BUT** in this filing Edison seeks to do those things it promised it would not do.
- ?? Edison told the public, its shareholders and the Commission that it could not and would not seek an increase in non-residential delivery service rates **BUT** in this filing it is seeking an increase in revenues and rates for delivery services alone that rivals its largest past increases for the inclusion of new nuclear power plants in rate base.
- ?? Edison in 1999 and 2000 told anyone who would listen that to remedy the effects of past failures it had undertaken a reliability recovery effort unequalled in the annals of the

utility industry **BUT** in this proceeding Edison now claims that there were no costs incurred that would not otherwise have been incurred if there had been no past failures and claims that 2000 was a near normal year for operations.

?? Edison claimed that the proposed increases would have no adverse customer or competitive impact **BUT** Edison provided no credible analytical support for that claim and now urges the Commission to ignore the overwhelming evidence to the contrary presented by the ARES Coalition.

?? Edison claimed to have removed from the 2000 test year all costs caused by past mismanagement of the delivery system **BUT**, when pinned down, Edison had to admit that it had excised only \$2 million – the amount the Company paid out for the Commission mandated studies by Liberty and Vantage that documented its sorry practices of the past.

?? Edison has stated that it seeks to reflect in delivery service charges the actual cost of such service **BUT** Edison has packed into revenue requirements many millions of dollars in costs previously allocated by the Commission to generation and transmission, doing so on the basis of an accounting system that Staff has found unusable for its field audits and which was reconfigured only late in the test year to purportedly record costs for the restructured Company – a restructuring that occurred after the test year.

?? Edison has claimed that it supports competition **BUT** Edison has gratuitously proposed cost of service methodology and rate design changes proven in this record to be upsetting to the savings structure the Commission established two years ago and most of which the Commission previously rejected.

?? Edison claims to have presented a fair and beneficial plan **BUT** Edison stands alone in its contentions, with Staff and Intervenors in near unanimous and vigorous opposition to virtually every Edison proposal in this filing.

The ARES Coalition joins with Staff and other Intervenors in respectfully seeking the Commission's strong leadership in continuing to promote the development of competition by rejecting Edison's efforts that would have only the result of undermining the progress so far achieved.

WHEREFORE, AES NewEnergy, Inc., Blackhawk Energy Services, L.L.C., and Enron Energy Services, Inc. respectfully request that the Commission enter an Order in the instant proceeding consistent with the arguments set forth in the instant Reply Brief, as outlined in the Executive Summary herein, as well as those set forth in the Initial Brief and the testimony submitted by the ARES Coalition in the instant proceeding, and granting such further additional or different relief as the Commission deems appropriate.

Respectfully submitted,

AES NEWENERGY, INC.
BLACKHAWK ENERGY SERVICES, L.L.C.
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By:_____

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